

REGION VII
HEARTLAND STATES
REGULATORY FAIRNESS BOARD HEARING
WEST DES MOINES, IOWA
JUNE 13, 2000

GAIL McDONALD: Good afternoon, everyone. Welcome to the Region 7, Heartland States Regulatory Fairness Board hearing. This is our third hearing in this region. I'm Gail McDonald, I am the National Ombudsman. We do ten of these hearings around the country to solicit the views of small businesses in terms of knowing about their regulatory experiences, both good and bad. We also ask agencies to come and to send their programs, what they're doing to improve their effectiveness in partnering with small businesses to carry out laws.

I am pleased to be joined here today by the Region 7 Regulatory Fairness Board and you'll be meeting them later. We have all five in attendance and this gives you an idea of how the program is carried out around the country. We have some 50 members in our ten regions and they are as active as I am in talking and really bringing the revolutionary word out there. Small business people have a right to regulatory fairness. The SBREFA Act, the Small Business Regulatory Fairness Effectiveness Act, long word, was passed in 1996 and it set up this program which, while still relatively young, is changing the way Federal agencies do business.

We hope also, of course, that the regulatory environment has several levels in this country, so we're hoping as time goes by that more states will follow the Federal model and adapt similar rights with their own agencies. So today you'll be hearing about some of those legislative efforts to spread the program and the good news. Our program is situated within the Small Business Administration. It is kind of an odd duck because, as I told you, we are here to hear about regulatory experiences in 30 Federal agencies, not just about some considerations and concerns you might have with SBA. The SBA is our host agency and I report to our Administrator, Aida Alvarez, because it was felt by the President and Congress, SBA has the greatest amount of communication with small business, with the 25 million small business owners in this

country. So we are very lucky to partner this program with other SBA programs. They do mailings for us, they get out the word. Today we are hosted here by our District Director at SBA, Cheryl Eftink and by Dean Cotton the Deputy Regional Administrator. They made the arrangements, Cheryl's been on the radio, you will see a lot of SBA staff and we have that kind of cooperation as we go around the country and have Roundtables and hearings like this one.

We are scheduled to hear testimony from small business people today and several agency presentations. I urge that many of you stay with us the whole day because you will learn a lot more about the program and about the complexity of the relationships that are discussed. So we're always kind of learning, probably we should invite civics classes as well.

But, anyway, I do welcome you and I thank you for your willingness to testify and participate and listen. We are very excited about this program and we want, as I say, to get the word out around the country about this so that the partnership that should be between government and its citizens can be realized for small business people.

It's now my privilege also to acknowledge at these hearings we usually have help from Congressional offices who tell us places in their district where people like to come for such meetings, who help us wherever they can. I think we have Jay Meyers here from Congressman Boswell's office. Am I correct, Jay, are you here? Not yet. We'll be seeing some representatives from Congressional offices during the day so this is a good place to buttonhole people for you. So I'm very pleased to be here and I'm pleased now to turn it over to our Chairman.

DAN MORGAN: Thanks, Gail. My voice doesn't usually require a microphone. I hail from Burwell, Nebraska. For those of you who don't know Nebraska geography, that's exactly 350 miles straight

west of Des Moines and I call it the Metro Center of the U.S.A. It's obviously cow country because we're located in the sand hills of Nebraska. My family and I are involved in the cattle business and have been all of our lives. We also are involved in the meat export business and ship products directly to supermarkets and restaurants in Europe and Asia and recently started doing the same thing with a dot.com company here in the United States.

I don't really know why I was appointed to this Board other than, I think, the SBREFA legislation also includes agriculture. So with my focus on agriculture and rural America, those are the main key issues that I take and bring to the Board. I think that Region 7 has a very active Board, we are a broad, diverse group of individuals who are involved in a variety of different businesses that all have one common theme and, that is, regulatory fairness and how it affects our businesses and our industry.

The hearing today will be relatively laid back. If you as a testifier have a bunch of questions and you as a regulator sitting out in the room can answer those questions, please just jump into the discussion and answer the questions. Right now, I'd like to thank our host for the meeting, Joanne Stockdale, from Iowa and she will introduce the balance of the members and start the process.

JOANNE STOCKDALE: I also have a very loud voice, so I think you can hear me fine. I'm Joanne Stockdale and I'm from Lake Park, Iowa, which is the western edge of Okaboje. We used to say, we're the western campus of the University of Okaboje, and those of you not from Iowa, it's a resort area so what can I say! I am the President and the owner of a die-casting company and if you don't know what die-casting is, basically, we're a foundry and so we're very regulated. I was appointed in the original appointment group and this is the first time we've all been here in Iowa. So I welcome all of you.

One of the objectives I have today when I have this many Iowans, in the room, is to foster the thoughts of not only do we care about Federal regulatory fairness for small businesses, but I think it's also important that we do think about Iowa regulatory fairness for small businesses. And so later in the day I'm also expecting a couple of state senators and representatives, at least, we hope, one or two. Missouri has been working on their own regulatory fairness at the state level and so later in the day I will be asking Scott George to describe it. In addition, we have several representatives of some of the consulting groups of some of our regulatory agencies within Iowa here and I want to introduce a few of those later in the day too after we get all the testimony from our small business owners and executives.

So welcome, thank you for coming and I hope the storm doesn't get too bad. Scott.

J. SCOTT GEORGE: Hi, I'm Scott George and I'm from Mount Vernon, Missouri which is 300 miles due south.

JOANNE STOCKDALE: I have to add, Des Moines does need an airport, I mean a lot better airline connections. All the people drove in because they couldn't make that airline connection. Go on.

J. SCOTT GEORGE: We're all from the Midwest and we know how to drive! I've been on the Board for almost four years now working for regulatory fairness. Health care is very highly regulated too and that's probably what drew my interest into this to try and reform the way we're being treated.

Last week I attended a Congressional small business seminar, about 800 delegates from around the United States met in D.C. and what we did was kind of like a mini-White House Conference for Small Business. We put forward to the Administration and to Congress issues that we feel are important that they can do to help small

businesses. One of the top is in the area of regulatory reform, which was one of the focus groups. One of the top issues was reform- of OSHA and EPA, I'm sorry, overhaul, that's the right word, overhaul. OSHA and EPA should get rid of the "gotch'ya mentality" and replace it with working together in partnership with small businesses to provide safer working environments and safer environments. That resonated very strongly through the focus groups and, again, when they had the final tally in among all the 700 plus delegates, it also got very high marks.

To show you the trend, I want to give you a couple of things. First of all, this is from The Washington Times several weeks ago. Washington-based Americans for Tax Reform has determined the Federal government employs nearly 130,000 Federal workers to issue and enforce Federal regulations within more than 50 departments and agencies. This regulatory army costs the taxpayers almost \$20 billion a year. I submit to you the cost is far greater than that. \$20 billion is your and my tax dollars that go to payrolls and budgets and things like that. I assure you my estimate would be that for every tax dollar we pay, there's thousands that we pay because businesses have to comply with all these regulations and jump through hoops we don't even know about. And every dollar of that cost my company and your company has to assume. For instance, the OSHA assumed the blood pathogens requirements for dental would cost \$1,700 for a dental practice for a year to implement. In the dental practice that I work in, after an initial investment of \$25,000 and an annual investment, we expect to exceed a cost of over \$100,000 a year for one dental practice. It was proved that the regulation was applied to protect against AIDS. The Center for Disease Control tracks every single health care worker in the United States who gets AIDS on the job, HIV. Of the 34 who ever have, not one was in the dental health care field.

The most recent example, and this is from today's USA Today, "Gas

Prices Top Record EPA Calls Heist Inappropriate." I'll read one paragraph. "The Clean Air Act required that cleaner burning gasoline go into effect in cities June 1st." The cleaner burning gasoline which cities are required to use jumped the price of gasoline 13.7 cents over the last week. That one regulation, that 13.7 cents a gallon, is going to ripple through our whole economy and add tremendously to the fuel price.

What we're doing today is taking testimony from small businesses and we use your testimony to issue a report card to the Congress. We've got a summary of it, here's the thick one, and we grade the agency. So I would really thank you for coming today, I appreciate you being here and we look forward to your testimony. Thank you.

GAIL McDONALD: Stella.

STELLA OLSON: Good afternoon, I'm Stella Olson and I'm from St. Louis County. I live in an unincorporated area of St. Louis County and I have a very small business. About five years ago I had a larger business. I sold it because of too many taxes being paid for employees and all the benefits because I just couldn't afford it. I'm also in the health care business of health care documentation. Like Scott, I'm very interested in what's happening, the regulations that affect us and those that cost us more money. I am talking about HHS and HCFA. I look around the room and there's not too many teeny-boppers out there so when you get to your middle of life, you start thinking about what's going to be there and how are we going to get there.

Well, if we keep applying more regulations, there isn't going to be anything left. As small business owners, we have a responsibility to make certain that regulatory agencies don't adopt the philosophy or continue to have the philosophy that one size fits all because it doesn't. My business is very small, it consists of two individuals. Scott has more employees. So whatever we do in our

business, we are there because we believe in what we have to offer the public and that is what this country was built on. As a member of this panel for almost four years now, it's sometimes been very difficult to listen to some of the testimony because we've heard testimony from individuals who have lost their businesses because of regulations. What we're doing is trying to stop some of that and get the cooperation of not just the regulatory agencies but also the individual small business owners out there like yourselves. I have had great pleasure with being with this Board.

These two gentlemen sitting next to me, we met when we were delegates to the White House Conference for Small Business so that's how long we've been working together. And we'll continue to work together even if we're not sitting on this Board.

ALONZO HARRISON: Thank you. I'm Alonzo Harrison and I probably need the mike. I, like many of you here, represent a small business firm. I'm out of Topeka, Kansas, right down the road and I just drove up although I suspect that if I got stopped by the Highway Patrol, they would guess that I was probably flying! But I wanted to get here and be here because of the fact that I, like my colleagues here, understand the importance of small business in this country. I, like my colleagues here, work for free. We do this because we understand if we don't say anything, if we don't let the regulators know that we have concerns with issues and the regulations and the enforcement of those regulations, that we effectively get what we get. It's been said well, sometimes we just can't do anything. Well, by the very nature of being in small business, you don't believe that. You believe you can make a difference, you believe that you often make a difference and that you do. As a result, many of us here will lean against the chilly winds of despair, we'll lean forward trying to make a difference. We want you to know that this is your time. We want you to come up and say what you need to say about what you experience for the

record. It will be recorded and will be reported and Scott held up to you the thick version of the regulations or the report on the regulations. We want your voice and your concerns to be heard and we want you to know that we're going to be here as long as we can to make a difference. We have one of the most effective and active regional boards in the country and at least four of us have been here for the length and the duration of the program. We want to hand over to someone else to carry it further, but we too still want to be involved. So having said that, I don't want to take too much of your time. I want you all to come forward and to give your testimony, then ask questions. We don't have the answers, we're business persons like yourselves, we too took off time from our daily activities. I'm in the construction business, heavy construction. I'm heavily regulated by OSHA, by DOT, by EPA and the list goes on. So it's important for me to be here because you all are here, you have concerns. The regulators are here and we want them to know that we're concerned about their enforcement, we're concerned about their behavior in some cases. In some cases, they've done a good job and that's good. But we're really not here to pat them on the back and we're not really here to kick them in the shins, we really want them to know that we're concerned and we want them to do better. We can do better, too, and that it really is a partnering effort. So with that, I'll turn it back over to Dan and then we will go forward.

DAN MORGAN: I think we're ready to begin. Hopefully, everyone got a blue folder that looks like this. There is an appraisal form in your packet and it's basically a one-page form that gives us the information we need, your company name and agency that you're either complimenting or have some criticism of and three levels of disclosure. You can choose to go forward with your comments disclosing your identity to the agency or not, keeping it confidential.

One of the things that's needed here and you should go through your packet, there's also this brochure that gives you a little bit more background on the SBREFA legislation and the Act that was put into law in '96. It is a compilation of the three years of recommendations that we have put forward to the agencies to implement and the agencies, pretty much all of them with a few exceptions, have agreed to implement. So if you want to take a look at those recommendations and when you're testifying today or if you want to submit written comments later, keep these recommendations in mind because these are things, these recommendations came from other small business owners when they were testifying and when they submitted before. If agencies have agreed to implement these recommendations, but they have failed in some way in carrying them out in the field, then one of the purposes of the program is to make sure that that implementation is working or if it's not, that it's fixed. And then an executive summary of that full report that Scott George was showing is in here as well. If you'd like to get a full copy of the report, you can either get it off of our website, which is in the material, or we can mail you one if you just let us know. Thanks.

The first person on the list is Bob Weiss of the Missouri Heartland Association.

BOB WEISS: My name is Bob Weiss and I'm from the Missouri Heartland Association. We represent approximately the owners of 90,000 rental units in the State of Missouri. We are an affiliate of the National Heart Association which represents about 4.7 million rental units in 32 states. Our problem today, as it was when I addressed this Board last year, is lead paint regulations from the EPA. As we did not know at that time, the problem has gotten worse instead of better.

I think this is of particular interest since this is not a matter

that just affects the group I'm representing, which are rental owners. The regulations pertain to any residence built before 1978 which might include your home. It has nothing to do with whether or not you use it for business or commercial purposes, it includes any residence of that age. The first regulation we have to deal with came down in 1996. It required only, when I say only, at the time we thought that it was a burden. At that time it was only that any lease or contract of a sale pre-1978 residence would have to have certain warning language in it and that you would have to give the buyer of the property or the incoming tenant a pamphlet dealing with how to protect your family from lead paint. This is a one-time only requirement. Of course, onerous fines, as the EPA tends to enjoy, but there was just one thing you had to do with that property at one time.

Then in June of 1999, they came forward with some new regulations, which I brought to the Board's attention last year which had to do with renovations. Which meant you had to give the tenant another warning, a notification of what work you were going to do on the property, at what time, and give them another pamphlet so, apparently, the EPA assumes they would have lost the one you gave them. You give this information to a tenant if you're going to do any new repairs or renovations in his unit or if you're going to do it out in the hallway, say, in a common area. You give those warnings and pamphlets to every tenant in the building.

You will keep records of the information you gave out and records when you gave out these pamphlets for three years. If you fail to do so, the penalty is \$25,000 per day! Those are the regulations we've been living under since June 1st. By the way, in case you're wondering what a renovation is, a renovation is any sort of repair that disturbs more than two square feet of a painted surface. So probably you're changing a light switch, doing any sort of plumbing, painting certainly, if painting includes scraping the

wall or sanding it, that's going to be a renovation. Every time you do a renovation, you give these warnings and pamphlets.

Well, whenever you think things can't get worse, they do. There are new sets of regulations that are coming out, they're scheduled to be effective September 15th. This does not pertain to all residences but it deals with a good portion of our membership, which deals with subsidized property. Any sort of subsidized housing of any Federal programs. You could not rent this property until you do extensive testing. The testing has to be done every time essentially there's a turnover of tenants. It's not enough, as we had done both in the 1996 and 1999 regulations, to disclose any hazards you knew about lead paint on the property because, like a lot of owners, the answer would be I don't know. All I know is for 1978, it's been painted three dozen times since then. I don't know what's under the 30th covering of paint, if there's lead under there, so I can mark the box that says I don't know. That's not good enough anymore if you're going to be dealing with Federally-subsidized property. You will test and find out if there's any sort of lead paint or lead hazard on the property.

Of course, no one will be allowed to occupy the property until you can determine whether or not there's lead paint and until the lab tests come back. So you get to sit there with the property vacant until you know for sure if there's a lead problem.-Of course, God help you if there is a lead problem. The justification that we get from the EPA, of course, like most regulation we get now is that it's to protect the children. Well, of course, the regulations have nothing to do with whether or not there are children on the property. It has to do with the age of the property. There is a presumption, again, it has nothing to do with whether or not there's any suspicion at all that there's lead there, if the property was built before 1978, then you're subject to these rules, period. The government presumes that there is a lead problem there

that you will deal with unless, of course, you want to pay to have someone come in and test it and certify that there is not a problem. This is getting harder and harder to do because very few people will come in and put their name on the line and say I certify there's no problem here when there might be somewhere in the depths of the walls a problem.

What this also deals with, one of the ripples, as Mr. George referred to that comes from this particular regulation, is you're going to see increasing shortages of affordable housing. Now, this is the same time, of course, that Secretary Cuomo and HUD, says we are in a crisis of affordable housing, it's the worst problem in affordable housing we've had for years. This might have something to do with the fact that HUD has been in existence for 35 years now. What this will do, of course, is put an extreme regulatory burden on property that was built before 1978. The way things are going with EPA regulations, I would imagine it's going to decrease the value of these properties. If you have a choice of investing or buying a particular property that is to be used for rental, and you have a choice of a pre- or a post-1978 property, then you would be rather foolish to go with the pre-1978 if you can buy a newer property and avoid all of these regulatory schemes. More and more owners across the country are opting out of the subsidized programs because they just don't want to have to deal with this. Most regulations, particularly in this area, start out with Federal programs and then are later expanded to everybody else. As I recall, I haven't checked the Internet this morning, I don't know if they've changed the rules again, but last I heard this was going to be for Federally-subsidized property and there is virtually a race to the doors on how quickly people can get out of subsidized property. I do not have the figures with me but you could find out from HUD how many owners of how many units are opting out of subsidized Federal programs for the reason that the regulations are

just getting more trouble than it's worth.

The incentive used to be, well, you sign up for this program and Uncle Sam will send you a check every month for all the rent. It's getting to where it's just not worth it. It's easier to go back to the old-fashioned way of renting than to deal with all the government regulations.

GAIL McDONALD: Mr. Weiss, is the asbestos, was this modeled on the asbestos regulation?

BOB WEISS: I really don't know. I'll be really honest with you, I am not an environmentalist. I know enough about this to know what some of the problems are and to educate those in our group who are even less educated than me. But we know generally the outlines of what we have to deal with here. I know some gentlemen here from the EPA who have met with some of the members of our group in Washington in March, and as I pointed out at that time, if you work for the EPA or if you were one of the senior people in our national organization, you probably know all the rules. This is what we have to do full-time. If you're Joe Six-Pack in Missouri or Iowa or anywhere else and you just happened to buy an apartment building last week, I have no idea how you can deal with any of this. Our national staff has seven lawyers who specialize in seven different areas of environmental law, taxes and building codes, that advise our organization. No attorney there is an expert in all of these fields. But if you go buy an apartment building next week, you better know it all or you are subject to these kind of fines. I think the \$25,000-a-day fine came from something which was originally designed to get the attention of major corporations like DuPont and all that. If you don't have a significant fine like that, you're not going to have them take you seriously. But now it's being applied to Ma and Pa Jones who own down the street. I don't know if it's tied to asbestos or not.

GAIL McDONALD: The regulations are not in plain English in meeting that criteria in your mind?

BOB WEISS: Well, to be real honest, the parts we understand are scary enough without worrying about what we don't understand. We understand enough to be scared. Some of the questions that have come up, for example, have been when you do work in a common area and it says you have to notify all of the other tenants. Does that mean all of the tenants in that building, does it mean if you have three or four buildings, you notify them all? Questions like that. Which sounds a little bit nitpicking ordinarily except if you're looking at a \$25,000 fine, you want to know the answer. I think this has been somewhat resolved, where let's say, for example, you're doing your repair on the tenth floor and it's very unlikely that the tenant on the first three floors are going to get up there very often. I think now you can get by with just posting a sign on the tenth floor as opposed to all ten floors. Some of these little details we've been debating over the last year have been worked out. But, in general, I know there's a number of things in there that are still being questioned and, again, of course, like any government agency, you know, they tend to change a few things here and there along the way. Our organization has been dealing with EPA for the last several years.

J. SCOTT GEORGE: Your organization obviously would stay up on this. I understand what you were saying on this lead paint rule. If I can go back for a minute about anyone who is responsible for making a modification. So what you're talking about is the electrical contractor who is down on Main Street that comes out to somebody's home. My mother's home is almost 100 years old, so he comes out to her home and they have to notify a painting contractor.

BOB WEISS: Absolutely.

J. SCOTT GEORGE: A plumber who comes out to repair her sink would fall under this and they are subject to the \$25,000 fine if they don't notify?

BOB WEISS: Yes. As I said when I began my remarks, this is not something aimed particularly at rental housing, this is aimed at old buildings. As an example, I think my house barely missed '78. I understand it was built about '81. But last fall, we had a gentleman come out, single, solo operator, a small a business as you can get, and he worked at our house for two months, he worked on four rooms ripping out a wall, he put in new plumbing and we just had him redo half of the house. And it wasn't until he was about done that I realized, I wonder if this poor guy has any idea of the kind of regulations he's subject to. My house barely makes the cutoff but he works all over the town. How many houses has he been in doing this kind of work with absolutely no clue whatsoever of the kind of Federal regulations that are hanging over him! He could be put out of business tomorrow easily. He probably doesn't make enough in a year to pay the fines for a week. And I'm sure there's people like that all over the place. Anyone that does that kind of work. If you can imagine, as you were saying, an electrician, a plumber, a painter, imagine anybody who does any work in a residence that disturbs more than two square feet of surface and that's who it applies to, anywhere in the United States.

J. SCOTT GEORGE: Well, the reason I bring that up is because, as I recall from last year's hearing, the 1998 recommendations, Recommendation #1 was agencies should be more aggressive in informing small businesses when they mend rules or regulations. And the EPA, in particular, in the report had been given high marks for notifying small businesses. We happened to have two painting contractors there and neither one of them had ever heard of the regulation.

Subsequent to that, several of us on this Board and throughout the nation conducted an informal survey, an unscientific survey. I asked my heating and air conditioning contractor in my home town and my electrical contractor and other people throughout southwest Missouri and none of them had ever heard of it. Yet the EPA got high marks. That actually was mentioned in last year's report and I'm going to read the EPA's response. If you don't mind may I take a minute?

EPA, this is their letter on January 18, 2000. Three comments concerning the EPA. It had not previously been brought to the EPA's attention, remember, this was in the hearing last year, and, oh, by the way, EPA was contacted on a mere comment last summer. Well, we hadn't enforced the regulations yet. It had been brought to the EPA's attention and we wish to look into it and respond to those concerns raised, but specifically cannot adequately do so in the seven days we were given to review this report. I wonder how many small businesses get seven days?

BOB WEISS: There's another interesting aspect of this which, again, has nothing to do with protecting children. Which we have already seen in our organization the first case of what I'll call "lead paint blackmail." This goes back to the 1996 regulations now, just handing out the pamphlet giving warning. Some property owners in St. Joseph, Missouri had rented an apartment to a young lady. The lease had been signed, she was ready to move in but her mother comes along and takes a look at the place and decides no, I don't want my daughter living here. She goes to the landlord and says I want you to tear up the lease, we changed our mind. The landlord says, look, she's 25 years old, she's an adult, she signed the lease, there's no reason for us to let her out of it. Well, mama had been around the block a couple of times apparently. I don't know if mom was a Federal employee, but I can't prove that. She says, you know, this is an old building and I don't think you

gave my daughter one of those lead paint samples or any kind of warranty about lead being there was no children involved. I could go to the EPA and have you fined \$10,000. Would you rather tear up the lease? They asked me about that and upon finding out they didn't have an extra \$10,000 of profit built into the lease, I told them it would be a good idea to go along with that. But this is the sort of thing, this is the practical real world. This is why, as you were saying before when you talked about the costs of regulation, that's not something you can put a dollar figure on as far as what we pay people in government or taxes. This little regulatory terrorism the small business person has to live with that we see in our industry. I know people in this room have seen it in their industries every day, that's what these regulations have been used for. They are not limiting it to the purposes that they say it's for, it's for children. These regulations don't just apply to children. It's massive regulation of the housing industry presently across the country. You've been very patient with me.

DAN MORGAN: One quick question. In order to change the regulation or at least amend it, does it require legislation or can it be done through the administrator of the EPA?

BOB WEISS: I think it could be done through the administrator. I think when there's a new administrator. Some of the senior people in our organization, in our Washington office, have met personally with Carol Browner and that's not going to happen with this administrator. Basically, our people have met with a very loud volume with Ms. Browner and were essentially informed as long as she is in office, she is going to protect the children and prevent children from being poisoned, et cetera. So, yes, it would be changed by an administrator.

JOANNE STOCKDALE: I did my own survey too when I got back last year and I asked in Dickinson County several people if they had

ever heard of the regulation and they had not. Now, how were your apartment owners notified of the new regulation as it came down?

BOB WEISS: That's because we have a professional staff in Washington, in Alexandria, one of those places to be exact, but we have paid professional staff whose job it is to do that for us.

JOANNE STOCKDALE: So the only way that carpetlayer or that plumber or that electrician or that painter can know about these regulations is to be a member of some professional organization that sends out regular newsletters and, hopefully, they stay on top of it?

BOB WEISS: I would imagine, you know. As I said, I know nothing about the plumbers and painters or any other organizations. I can tell you, as far as our membership is concerned, the way we found out about it because we have a paid professional staff whose job it is to do that for us. The plumbers and house painters and all that may have similar organizations but I don't know of anybody, any property owner in the State of Missouri or nationally, who knew about this other than because they are employees of our association.

JOANNE STOCKDALE: So there's been no notification procedure by the EPA to let the small business owners know that you know of it?

BOB WEISS: None that I know of. And the guys that worked on my house apparently didn't know about it either.

ALONZO HARRISON: Ultimately, the person doing the work would be responsible or the owner of the property?

BOB WEISS: Well, technically, it says the renovator is the one responsible for notifying the owner or the tenant. In our industry the owner is the renovator most of the time. Also, from what I've seen in the regulations, even if, say, you're the landlord, you've

got a duplex someplace and you're good with your hands and you're in the construction business so you do all the work yourself. A renovator is defined, as I recall it, as someone who is doing this for money, of course, you would say nobody is paying me for this, I'm working on my own property. The EPA interprets that as since you are getting rent from this property, you are doing it for money, you are a renovator even though you are working on the property you own.

ALONZO HARRISON: Well, I know in the asbestos industry, the obligation rests with the owner of the property. Here, it seems that you're playing a bit fast and loose with the rules, not in terms of who got the money, because if you have a plumber come in and move a pipe that's next to an electrical outlet or something of that nature, you've got two disciplines in. Then maybe someone who comes in and does the netting so you've got another discipline and then maybe someone comes in to paint so you've got another discipline. They were suggesting that maybe four of these people had to have these same reports.

BOB WEISS: Oh, yes, absolutely.

ALONZO HARRISON: And it's still in the same two foot square area.

BOB WEISS: Anyone who does renovation that disturbs that surface, of course, theoretically it could be disturbing lead paint or something, that has to do that. It says "each renovator." It's not per job, the way I read the regulations.

ALONZO HARRISON: So it actually could be in that scenario, maybe \$100,000 for a two-foot square area for all the disciplines that impacted that in one way or another for one day?

BOB WEISS: Well, who knows, yes. All of these people, of course, would be. You're asking about the fine? Sure. If none of them

gave the warnings or anything, yes, four people failing to give warnings at \$25,000 each. Yes.

ALONZO HARRISON: That's what I really wanted to have put on the record that for a two-foot square area, theoretically, theoretically, it could be for four disciplines working on it, a \$100,000 fine if none of these one-person operators, small business, actually notified the owner, the tenant, et cetera.

BOB WEISS: Sure. And I don't know how this would be interpreted but let's say, for example, you have an apartment building with 50 tenants in it and you're doing work in a common area and you're supposed to give notification to all 50 of them for a particular job, I don't know if that's one violation or 50. Maybe the people from the EPA might be able to clarify that.

DAN MORGAN: Mr. Erikson of the EPA is here and is going to be addressing some of these questions a little later.

BOB WEISS: One violation would generally be enough to put most people out of business concerned with, it's kind of like, you know, killing 20 people at once.

ALONZO HARRISON: One quick question. On the enforcement and it certainly sounds like the rule is problematic enough for a lot of different industries, is it possible for you to get some of your members to fill out the appraisal form and give us some examples because, as Mr. George spoke earlier, EPA had told us when we followed up on some of the testimony we received last year that they were not enforcing this against small businesses and for whatever that's worth, one of the things that made it uncomfortable for us is well, when will you start or are you going to start? I mean it's certainly one of the major issues that we face as agency notification of small businesses of their responsibilities and I think the survey of Board members, at least anecdotally, showed

that that was not done. But if you do have some members who have had the enforcement actions by the agency, that would be a great vehicle for us to attack the problem.

BOB WEISS: Sure. Our particular industry is very heavily small business. 85 percent of all the tenants in the United States live in places that are owned by landlords who have 50 or fewer units. So it's still largely a small business. You hear a lot of news about the mega, the multi-city businesses, but it's still generally small business.

DAN MORGAN: Thank you. Next is Todd Scott of River Products.

TODD SCOTT: Ms. McDonald, Chairman Morgan and Members of the Regulatory Fairness Board, I want to thank you for the opportunity to be heard today. My name is Todd Scott, I'm Corporate Counsel for River Products Company in Iowa City, Iowa. Today I'm in place of Bill Mossman who submitted materials to you. He's our safety and training officer and right now he's in the middle of Federal inspection so he couldn't make it today.

River Products Company is a small business with approximately 90 employees. We're a manufacturer of crushed limestone and sand and gravel products. We currently operate three open-pit surface quarries, one underground mine and two sand and gravel operations in southeast Iowa. Like many of you, we are regulated by a number of Federal and State agencies, but today I'm here to discuss the Department of Labor. More particularly, the Mine, Safety and Health Administration, also known as MSHA, that's an acronym, M-S-H-A.

Within MSHA there are two divisions, a coal division and a metal/non-metals division. As limestone producers, we fall into the metal/non-metal division. Iowa is in the north central district out of Duluth, Minnesota and the inspectors come out of

field offices either in Fort Dodge, Iowa or Peru, Illinois. The MSHA was originally --

TODD SCOTT: There's a couple of very important differences that I want to bring out and one is MSHA does not need a subpoena to come on to our property. They can come on to it at anytime. In fact, by law, they have to come on to our underground site four times a year and our open pit two times a year and inspect it.

The second thing is they do not need a court order to shut down our operation or any of our equipment. The inspectors have full authority to do that.

The third thing is, like I said before, a lot of people never see OSHA on their site unless there's an accident or somebody files a complaint. I already mentioned that we're different, that by law they have to come on to our premises.

In the last year or so we've seen our citations per inspection visit rise dramatically. This is at a time when our incident rate and our accident rate at our operations have remained the same or decreased. Therefore, I'd like to briefly cover three topics. The first is the increase in citations by MSHA, the second is some examples of inconsistency by MSHA inspectors and the third is some economic consequences of MSHA regulations and increased citations.

The first one. Increase in citations by MSHA inspectors. As I stated earlier, we fall under two different field offices, Fort Dodge, Iowa or Peru, Illinois. Before late 1998, we were under the Fort Dodge, Iowa office. For the most part, everything went well. We would average at all our different locations probably one to two citations per inspection visit. Late 1998 and early 1999, the Peru, Illinois field office started taking over. Just for some

numbers, the first time they were at one of our quarries called the Clime Quarry, we got ten citations. The first time they went to our Columbus Junction Underground mine, we got six citations. And the first time they were at our main operation called the Conkland Quarry, we received 23 citations. This is a quarry premises that only had 17 citations in the five years prior, from 1993 to 1998, we had 17 citations. The Peru, Illinois officer comes on site and we get 23. They are also there today. Yesterday they were there for half of the day and we got 14 already.

You're going to find out River Products is not alone. There's fellow members of the Iowa Livestock Producers Association out here that have had the same problems, in particular, with the Peru, Illinois field office. You're asking why is the increase? We have no idea. There's a lot of anecdotal rumors and evidence going around that MSHA is trying to raise revenues, that inspectors only get promotion based on their quotas, that some of these inspectors come from coal mines or deep underground mines on the East Coast and they have no idea what limestone is until they step on our property. These inspectors come from union places in the East Coast where unions welcome inspectors, they wanted inspectors to come harass the owners and shut them down. We don't know what the reason is but it's very troubling and to add to that, there is a code section, it's in their compliance manual, I'm not sure, but it states that inspectors aren't bound by statistical probabilities when they come in and inspect, they're only bound by their knowledge and their experience. We find this very troubling when we have coal mine inspectors coming to a limestone operation.

The second topic I want to talk about is the inconsistency of MSHA inspectors. That's what Mr. Mossman submitted to you. He is our safety training officer, that's what he finds most troubling because he never knows from inspection to inspection what's going to happen. He provided you with three examples and I'll just run

down them very quickly. The first was a citation for an improper guard on a machine. I think this was at our Columbus Junction site. The problem with that is the previous MSHA inspector designed this guard and approved it so we built it according to what the MSHA inspector said. The next one came in and said, no, that's wrong, you're getting a citation.

Another example is a citation for an improper guard on a fan blade. I have large 50-ton haul trucks. These are mammoth trucks. The fan is five to six feet up in the air and a foot inside. We have to guard these completely. Why? I don't know, I've never seen anybody fall inwards and upwards into the fan. But there was a fatality where a mechanic was working on a motor and he fell into the fan and died. A guard would have helped if he wanted to save his life, he needs to take the guard off and fix it. But when I talk about inspectors are bound by experience and knowledge, that's the kind of instances they use. They take one example, one fatality in the United States, and they apply it to all of us. So we got cited on six trucks, I believe.

The supervisor in the Peru, Illinois office supplied us with an administrative law decision from some court on the East Coast someplace. It has no bearing, no precedence on the 8th Circuit Court of Appeals here in the State of Iowa. But that's the kind of mentality they use and the precedence they rely on.

The third example, he gave a citation for improper access to a floating water pump. One of our citations, we have a pump and we pump water out to run a wash plant. Nobody ever goes into that. We make sure nobody ever goes to this area except if it breaks down. Well, it's been inspected for years and years and years and no inspector ever said anything. All of a sudden, a new inspector comes, he wants safe access to it, he wants the thing guarded and railed so we have to do this, rail this thing and all it does is

open up some more MSHA citations for improper guarding, improper work platforms and the whole works. So if I could speak for Bill Mossman, our safety director, his most troubling aspect is the inconsistency.

Back to those haul trucks, they are the same haul trucks we've had for the last ten years. They've gone through at least 15 inspections and never been cited before. I'm going to move on because I know some of the other producer members out in the audience have plenty of examples of MSHA inconsistency. The last thing I want to briefly talk about is the economic consequences of MSHA regulations and increased citations. You already know that just having to build guards or build safe access or replace gauges is very costly in itself, but it's like the gentleman talked before. That's not the most expensive cost. The most expensive cost is the administrative cost. The training and the implementing of all these rules.

River Products has hired me, I'm a full-time attorney. I spend most of my time dealing with government regulations. Bill Mossman, our safety director, that's all he deals with. Right there are two person's salaries in a small company that deal with nothing but government regulations.

Along with the increased number of citations for inspection visits, MSHA has this elaborate system. When you have too many inspections, when you get over 2:1 inspections per visit or per day, you get tagged 20 points in this formula when they fine you. So instead of a \$55 fine, all of a sudden because of them 20 points, you could have possibly like a \$500 fine or better. All of our sites were below this 2:1 before the Peru, Illinois office took over. Now, I don't think any one of them are.

Along with the increased citations, there's been a lack of cooperativeness on the Peru, Illinois inspectors. Before,

inspectors would make recommendations to you, say get it fixed by this time, we won't fine you. That's not the case anymore. They cite you. And that leaves us, as operators, with little choice but to challenge every one of these citations. What does that mean? That means more legal fees.

I think all we've talked about is that there is going to be a result of a loss of small businesses. Before I leave, I want to quote a fellow by the name of Drew Meyer, he's the Vice President of Construction Materials from Vulcan Materials Company, they're an international stone manufacturer. In the Stone Review magazine in May/June 2000, Page 24, Mr. Meyer was discussing safety and health regulations and how the enforcement has become tougher. Mr. Meyer said, "Small and mid-sized companies will find that the capital and overhead costs associated with compliance will only grow. Even if the companies can comply, the owners may decide that the effort is too great."

His conclusion is that consolidation is inevitable for small to mid-sized companies, that big companies like him, Vulcan Materials, will survive. So I want to thank you for your time and attention today and please don't let Mr. Meyer's conclusion become a reality and help us stop the unfairness of MSHA.

DAN MORGAN: Any questions?

GAIL McDONALD: I'm interested about the citations. How long are you going to have to fix them?

TODD SCOTT: To fix them, it depends. Usually, they want them fixed by the next day when they come back. They're usually there two days. If there are parts that we have to order, they'll give us time.

J. SCOTT GEORGE: Can you clarify, prior to '98 I heard you say that

you were given a grace period to fix things and then there would be no fine.

TODD SCOTT: Yes, correct. That was customary that they would often go through and say, hey, if you can fix that by the time I leave tonight, I won't write you up. We just had ten citations at one of our sites, they wrote us up. We had all nine fixed by the time he left at 5:30 that night, the only one we didn't fix, we had the special one of their gauges from a manufacturer.

DAN MORGAN: The citations go into your permanent file?

TODD SCOTT: They retain them for at least two years so that they figure that violations per inspection day, 2.1. So when they're doing their formula, they have at least two years worth of data.

DAN MORGAN: There would be a number of citations affect your insurance premium?

TODD SCOTT: Sure. We have the insurance auditor is going to come out and examine our work place.

DAN MORGAN: So the more citations, the higher the premium?

TODD SCOTT: I don't know if there's a direct correlation.

J. SCOTT GEORGE: There's some evenness that you're saying, are you or maybe some of the others who have talked to the issue, is this something that is local or is this something that your industry is showing up all over?

TODD SCOTT: Well, this Peru, Illinois office inspects in Iowa, Illinois, many parts of Wisconsin. Everyone that I've heard of has had problems with the Peru, Illinois office. I think there's other members out there though that have had the same problems. I think there's a nationwide problem on inconsistency, what one inspector finds, you know, the next inspector won't. There's no way we can

rely on the past inspector or the past inspection to say that we're in compliance because we have no idea what they'll say regardless of how many times this one piece of equipment may have been inspected.

J. SCOTT GEORGE: If you're getting inspected at a minimum of two or four times a year, I don't know, maybe your business is more dynamic than most small businesses I know. You're not introducing that much in your staff, new work practices, new equipment. They're seeing the same equipment over and over and over again and then suddenly all these problems come up.

TODD SCOTT: That's right. And our injury rates have not increased, our injury rates are excellent ratings, they have not increased, you know. So it's another reason that what's the justification for the increase in citations.

STELLA OLSON: Do you know what the experience and qualifications of these inspectors are?

TODD SCOTT: We were just talking about that at lunch today that, I think, they have to have five years of experience in a mine, in a mine-related field and a background check.

STELLA OLSON: And that's all?

TODD SCOTT: That's it.

STELLA OLSON: Is that written into the regulation?

TODD SCOTT: That was stated by the business supervisor in Peru of our company.

J. SCOTT GEORGE: The District Supervisor said those are the requirements and the criteria?

TODD SCOTT: I think they ought to go through a training in the

academy. They have to go through a training in the academy, MSHA Academy or whatever it's called, in West Virginia.

STELLA OLSON: They have an actual academy?

TODD SCOTT: Our own safety and training officer went there for training too. He was surprised then that you went through the training, he said the whole time they talked about the spirit of cooperation and how MSHA can get along with regulators and he had never been in our industry before, never been in the regulation industry. He came back from Beckley, one of his first inspections was 23 citations, and he thought where is the cooperation.

J. SCOTT GEORGE: So what the training is telling them, the training they were given, I'll commend you for sending your own people there, that's a great idea. The training that the inspectors were getting is to try to promote teamwork and cooperation with the businesses and then, in reality, what they do is they come out there and fine on the first visit and give no time for clean-up and give you no credit for fixing your own stock?

TODD SCOTT: I think that's a fair statement.

J. SCOTT GEORGE: It would lead one to draw the conclusion that perhaps the training and the reality of what happens is the "gotch'ya mentality" is still there.

TODD SCOTT: Very much so.

STELLA OLSON: Do you know if the inspectors have been told that they must meet a quota?

TODD SCOTT: There was one inspector who told our safety and training officer, and he was leaving MSHA, he was in private industry, he went to MSHA, he wasn't happy, he wanted to get out and was going back to private industry. He told our safety and

training officer off the record that when it's promotion time, they look at the inspector's citation history. That's anecdotal, I can't prove that.

DAN MORGAN: Any other questions? Rick Kuhlman from Kuhlman Construction.

RICK KUHLMAN: I think my voice also carries very well. Good afternoon. Thanks for letting me talk up here. Basically, I'm going to read our text too but, basically, I'm representing the same situation as the man from River Products and the ILPA, which is the Ivory Limestone Association of Iowa, our concern too is MSHA, the Mine, Health and Safety Administration.

The purpose of our testimony is to bring to light the manner in which MSHA conducts its inspections of our portable stone crushing plant. We have been in business for over 50 years and been the recipient of numerous safety awards from various associations and have an experience modification on our Workmen's Comp of .68. Safety is important to us.

For many years we managed to accumulate only a handful of violations per year and always for a minor violation. We have families with more than one generation working for us, 73 percent of our work force has been with us for over ten years, which would be an unlikely accomplishment if our site was felt to be unsafe. Since the Peru District has taken over the inspection in our area, we have been cited for an increased number of violations, many that we believe to be unfair. The plants, the way they are set up and the manner in which they are operated have remained essentially the same for many years. They have always passed inspections with flying colors. Enter the Peru District and suddenly things that were fine two years ago are in violation.

We maintain our corporate office in Colesburg, Iowa. Since we

operate portable plants and it's not feasible to have an office in each of the 30 plus quarries we crush in, we have always maintained our records in our corporate office. This has been fine with the inspections up until now. Not only did we receive citations for not having our quarterly reports on site, but they fined us for each quarter since the last inspection. Keep in mind, there are no offices in the quarry. Our quarrymen evidently are supposed to keep their records in their pick-up trucks.

In May 11, 2000, Appeal Conference in Peru, Illinois, we were told by Ralph Christianson, the District Supervisor, that inspectors need to see these records to make sure that they have been sent in. Yet the records are sent to Colorado and all he gets is a list of those who have not turned in quarterly report. We offered to send him copies of our quarterly report and he said he did not want it. On May 11th at the Appeal Conference a simple theme that kept coming through from the District Supervisor was that his superiors required him to produce 100 percent inspection and 100 percent compliance. He mentioned numerous times that he was short a couple of inspectors and that he was going to be hard pressed to meet this requirement. When the inspection assignments are given out on Thursday or Friday for the following week, an inspector will jump all over rather than cover a given area. We have several plants but when an inspector shows up, he will only look at one.

The last time MSHA visited us, they inspected Plant #5 and a different inspector showed up within days to look at Plant #3. Wouldn't it make more sense to have one inspector cover all the plants of our company as well as all the mine sites in one area? Wouldn't this be a more prudent use of our tax dollars? Having two inspectors in the same area within days of each other seems like a very inefficient way to schedule inspections of over 400 mine sites by four inspectors.

We feel that MSHA as an agency has began a campaign to justify their existence by the revenue that they track through the fines that says for citation. It's almost as if they want to prove their importance to the next administration. They want to prove that they are a vital agency and they generate sizeable revenues and they should be immune from downsizing or reorganizing. They want to prove that the mine operators are simpletons that cannot take care of themselves or their employees and need constant and strict supervision.

The size of the assessments are based on the numbers of citations per inspection. More citations per se, the larger the assessment is for each citation. Even if the citation is terminated, meaning that the unsafe situation has been corrected, the fine is still assessed. MSHA as an agency certainly looks better and more important when it assesses larger fines even if they are an accumulation of numerous smaller assessments, whether or not the citations are justified.

At the Appeal Conference we asked why MSHA wouldn't work with objectives rather than merely write citations. Why couldn't they inspect a plant, advise the superintendent as to the necessary correction and then come back in a couple of days to see if the corrections were made? Mr. Christianson said this was tried years ago and didn't work because a few miners wouldn't make the corrections. More likely, the method didn't generate enough revenue to justify the agency's existence.

As it is, they inspect the plant, write citations and come back to see if the corrections are made, then terminate the citations if corrected. Once the citation is written, there is a monetary value attached even if the citation is terminated. That fine must be paid. Those citations are written because of an inspector's interpretation of the law. We were cited in the last inspection

because the post road to the scale house was not sloped enough. It had passed all inspections for the past 27 years. We asked for input on what a suitable slope ratio would be? The District Supervisor would not tell us what he considered a suitable slope but did say that if the inspector didn't feel it was enough, he could write a citation for it, which he did. In Deer Mine, owned by another company, the same citation was completely overlooked by the inspector.

On the same day we had a similar discussion concerning pinch point. In a sense, every time a guard is placed on a pinch point, it creates a new pinch point. They would give us no guidance as to how far we need to go to eliminate the pinch point, short of fencing the entire plant. Yet assured us that if they receive an area or perceive an area to contain a pinch point that was unguarded, they would certainly write a citation for it, which they had.

This attitude puts us at the mercy of different inspections on a different date. We were told by the District Supervisor that his personnel performs thorough inspections on each site. If they refuse to sign a form stating that the plant was in compliance. Evidently it's okay for the inspectors to overlook a particular hazard, but it's not okay for the mine operators to miss a single point which through oversight, misinterpretation or negligence. The issue of safety is important to us. We believe strongly in taking care of our employees, we see them all as part of our extended family. We also feel that we are capable of season hazards and removing them without a police-type agency telling us how to do it. Most companies would be more than willing to work with MSHA if it had an attitude of cooperation rather than just law enforcement.

It's difficult to have an inspector whose only experience is five

years in a mine-related field and a background check to tell a producer who has been in business for 50 plus years, with an excellent safety record, that he is jeopardizing the safety of his employees. The ones who don't care about safety are the ones who don't survive in this business. I feel that we're survivors just like other people out here. My dad started this business along with my grandfather and I feel that it's been good to us. We are a small business and it's supplying a good product to the State of Iowa and keeping people employed locally which is important. But I use River Products example there, that last quotation, you have to wonder whether it is something that is going to be good and viable that we should keep extending. I just have a son that graduated, he's 18. He's going to a tech school and I have three other girls coming up and I have a nine-year old at home and they're all very interested in the business but you wonder how much can our shoulders stand before we succumb to the weight. My brother and myself, we are very dedicated and we believe a lot in what we're saying here. Again, thank you for letting me talk. If there's any questions that I can answer, Rich White is with the ILPA and if it concerns something there, he can be in contact. Again, I will always be available to talk with anybody. Thank you.

STELLA OLSON: Do you think the attitude changed in the whole agency perhaps in '98 or is it just the one office, from your point of view, that has given you such a mark?

RICK KUHLMAN: That reference, it just seems like in what he said and what we've said, the other people that come in would come in and they might go away or come back that evening or the next day. They would want to help us. Safety was a concern. Like he said, when they went to training down there, they were here to prevent accidents, they wanted to do it. The people from Fort Dodge and we even had some from Duke. We had electrical people that came out of Fort Dodge and we had problems. We run everything at 440. And

they've got us straightened away and it was the best thing that ever happened and we accepted their thing but we did not get any citation for it but we spent over \$200,000 to get us in that there but it was the best thing that ever happened. We didn't get fined \$10,000 because we were doing anything wrong. Yes, I agree with what you said. It seems like in the Peru office, everything is related to the coal mining industry and it just seems to be that I usually don't name people by names. There are supervisors there. But this gentleman has caused us a lot of undue stress and I don't know whether he's bucking for a promotion to go to Washington, D.C. or what is his goal, but that 100 percent compliance or whatever it is that he's got, sometimes it's really hurtful.

DAN MORGAN: Is there like a compliance review board that you can take a complaint to with MSHA?

RICK KUHLMAN: I can't answer that, sir. The only thing that we have right now is we appeal, we go down to Peru. If that's what you're saying and if we are not satisfied, then we can go to Duluth and talk to a Gary Cooke or Lee Ratcliff and then they will get back with you never knowing when you leave there. Yes, you can go up for the review of that, yes. I have done that last year because getting back, we had 28 citations with one plant, 25 with the other one. We run three portable plants. And my little brother runs the third one and we were inspected last Fall. He went through all the citations, went up there and done all the things that they had told us about. He went up there with the guy walked through it. He went there and we had one ground-wear that was not in compliance and we got a citation for it, which we did not contest.

This same plant which has had nothing changed, which is under inspection right now by a George Kent, we have ten citations as of yesterday, the same plant. We have guards to our generator and this was given first-hand by the gentleman from Peru. Before that

we were running a first class, top-notch operation. Which is what we want, we want safety, we want people to know. But the thing also that really when we were down in Peru, MSHA was, I want this, I want that, I will do this, I will do that. Somewhere along the line, if we're going to have this cooperation, we've got to have the "we" part. "We" all went together and fought the war back in the '40s to eliminate that and, somewhere along the line, we're working for the same side. I don't know what else to say, we're all on the same side. I, again, I'm repeating myself, thanks for taking the time and there's many other stories out here too and you have got a hard job ahead of you.

These ten things here, that's very good. There's some regulations coming up here in September with this hearing and many other things. Hopefully, we can justify it and we can hold our company together. We want to do it right, don't need to be penalized severely on the way.

GAIL McDONALD: Thank you.

J. SCOTT GEORGE: Can I ask, I want to make sure, first of all, you're to be commended for your Workers Comp at .68. The majority of us up here are second generation businesses and are trying diligently to pass it to the third so we understand. You were very clear in your testimony, I appreciate that, about the paperwork violations and being cited for those. This was with respect to the quarterly reports.

RICK KUHLMAN: Yes.

J. SCOTT GEORGE: These are nothing more than some inspectors got a check-off list and if it's not there!

RICK KUHLMAN: That's exactly what it was because our portable remote location was 20 miles from our corporate office which is in

Colesburg and he would not drive up there. I did not have them along which showed the reports from the last three years. So he wrote the ticket.

J. SCOTT GEORGE: And you paid a fine.

RICK KUHLMAN: And we paid the fine of \$55 for each one of them.

J. SCOTT GEORGE: Who are the reports filed to?

RICK KUHLMAN: They are sent to Colorado to the MSHA, to their Mine and Safety out there. And then they send a report back to all the offices of the people that don't send them in. They don't send them in the reports of the people that send them in, just for the ones that don't. And we don't understand that. We offered to send them to him down there and he could look at them and see them because of the amount of extra paperwork that is being created like this. And like you said, the inspector will have to go out and see it and then write a citation for it.

J. SCOTT GEORGE: I guess my real question is it goes to his main office and it's then turned in in a timely manner. What you're saying is is that the main office is not talking to the guy in the field, letting him know that the reports are there? Or he is not checking? Or they don't have a mechanism to determine whether or not they need to check that out in the first place?

RICK KUHLMAN: That's exactly right. They get a report from, I can't tell you the town or the city in Colorado, but they get the report from the ones that are not sending it in, but we all get thrown in the same basket so you've got to check everybody. Now, we send out in the mail to our foreman and superintendent another packet, which I said I would never do but I relented because we're trying to get along. I was tired of that \$55 citation.

ALONZO HARRISON: In '95, then Vice President Gore came down and he

tore up and threw away a big bundle of needless reports and regulations at our meeting, we were there. And, basically, it's a nonsense regulation. I mean if the report was there and it was in the office in a timely manner and the people in the field simply hadn't been communicated with, it appears to me that, again, there had not been a violation. It ought to have been, I would suspect, if they talked at all, just waived. That's what we tried to get OSHA to do in the Kansas City region, that when that came down, I think there were violations, the Regional Administrator would just check that off and then find out why.

J. SCOTT GEORGE: Marsha Dramafield would call, she has a small business and lives in our region, has stated in this hearing last year that a first-time paperwork violation and a fine, she would tear it up right in front of our eyes. I think that came from, frankly, I'm going to out-rank you, as I recall, President Clinton giving direction in a meeting with us. He said I'm giving directions to the regulatory agencies, and I do believe they all still work for him, on the paperwork violations and first-time filings to greatly roll those back and change the attitude, you know, of citations on paperwork. It sounds like one particular agency doesn't have the message.

RICK KUHLMAN: They tore those up but it cost \$55 apiece for them.

ALONZO HARRISON: For me, to go back to the ombudsman here and our legal counsel and everyone like that, for them to communicate for us with someone in that regard because it makes sense just to find out if the information is there. Why are they being so redundant and then to make them pay for something that they already have. That's where the real help here is, not only to put it on the record, but for someone to inquire as to whether it's being done, why not communicate that information to the field people. I mean you're talking about a phone call or even a regional meeting in

Iowa or Colorado, wherever they need to go, and say, hey, listen, we've got the information here, why are you beating these folks up. I mean it seems to me that that becomes one of the common sense solutions to a nonsensical issue, paperwork. I'm not talking about real violations, but I'm talking about a paperwork issue. That was my comment and question.

J. SCOTT GEORGE: I want to draw one more point, sorry to keep you there.

RICK KUHLMAN: No, I'd sit here all day if you want me to.

J. SCOTT GEORGE: One of the points you made is that at an Appeal Conference, we asked MSHA to work with the contractors and inspect the plant, advise corrections, come back a few days later to see if they were made. Mr. Christianson said this was tried years ago and it didn't work because a few miners didn't make corrections. I assume that's a few businesses wouldn't make the corrections? I just want to make sure I understand.

RICK KUHLMAN: Yes.

J. SCOTT GEORGE: And that's one of the complaints we hear. We've heard this from other industries where agencies, HCFA, two years ago, as beating up on the home health care agencies nationwide because a few bad apples who ripped them off of a million or two. Now they're beating everybody up and they're driving them out of business. It's kind of like when I was a kid and because you had one or two people like that, everybody got to stay in from recess for a month. And what that tells me is that the agencies and the inspectors didn't do their job with the one or two businesses that didn't comply. I think OSHA is trying to make great strides and I'm going to switch to another agency for a minute, in trying to be more cooperative. And they've got some really good programs. I have no problem with them going after the chicken plant in South

Carolina. But the rest of them, the good operators that have a good Worker's Comp rating that I would love to have and an exemplary safety record, that you take care of your people and your business and, you know, run your business.

RICK KUHLMAN: Well, our people make our business just like everybody else. So if you keep your people to work for you and take good care of them so you have a good safety record, what more is there? That's all there is.

STELLA OLSON: I have a question. I just found this out, I guess I was sleeping, but MSHA comes under the Department of Labor?

RICK KUHLMAN: Yes.

STELLA OLSON: Have you folks sent a letter to the Department of Labor about these things?

RICK KUHLMAN: No.

STELLA OLSON: You've written to your senator?

RICK KUHLMAN: Yes.

J. SCOTT GEORGE: And OSHA and the Department of Labor too? That was a rhetorical question.

STELLA OLSON: Have you filled out one of our forms?

RICK KUHLMAN: No, that's why we're here.

STELLA OLSON: You're going to fill out forms, all of you?

RICK KUHLMAN: Everybody. You bet!

STELLA OLSON: Other folks too?

RICK KUHLMAN: Yes. Within our association, I'm sure everybody will. This is why we're here today, we welcomed it when Rich with

the ILP there got with Tom, I think it was, back there, and got this thing set up. That's why I was almost the first one to jump on the bandwagon, this is the first time we had any semblance that we could come in and say anything outside of going right to Duluth or whatever it is. But, again, realizing we weren't having this problem, that inspectors were working with us up to the last year and a half, two years. After all, we're small, we're not Vulcan. We are trying to run a business and I will be honest with you, the last two years, the aggregate business, we had been busy, there's been a great demand for it which is good because it passes right on. Many people are employed all over the United States, not just here in the Midwest. This is what puts people to work, this is what keeps people going. Because the product that we are making, manufacturing, is coming out of the United States. It's not being imported, it is here and it is used for everything. It's a great thing right now. The thing that's starting to handicap us all, which you don't have any, is this fuel price. I hope this thing gets ironed out a little bit here. We were experiencing problems about a year ago, it would have been in January of this year, our fuel costs are almost 68 cents a gallon more and that's a bite!

STELLA OLSON: I have one more question. How much would you estimate, dollar amount, in fines overall?

RICK KUHLMAN: For everybody that's in the State of Iowa?

STELLA OLSON: Everybody.

RICK KUHLMAN: Our association, could I take a rain check on that and do something with that?

STELLA OLSON: That would be good.

RICK KUHLMAN: And send that to you through Rich because we still have some that are pending, we are gaining some more today, I

assume, and I don't have all my facts yet from this year. '99, I don't have any figures right now, but we can gather them. I'll make sure before we leave, whether we send it to all you or we'll get the right statistics. I know there are some people sitting on the Board or sitting in the room that have 90 to 100 citations within this year.

STELLA OLSON: If we could find out how many citations overall and how much money was involved.

ALONZO HARRISON: As long as you look at the numbers, is it up 20 percent, 60 percent, 100 percent?

STEVE YERINGTON: I also would like to thank the Board for meeting with us. I listened to Todd and listened to Rick, that's the first time I've heard those and I think they wrote my pages here. So I'm going to read this. I'd like to discuss some areas of concern we have with three MSHA regulations and enforcement. Our goal, like that of MSHA, is to provide a safe environment for employees and anyone else on our premises.

We have some concerns, however, about the recent practices of MSHA as related to our operations. I will list some items of concern and explain each briefly. We received citations for guards not being placed on engines of new equipment. When we received a new loader, a haul truck, one of the first things we have to do to them to be in compliance with MSHA is to take a torture welder to this new piece of equipment. MSHA could have, in my eyes, started this program with carrots, et cetera. The inspector's cars have a serpentine bolt exposed in each of their cars so safely they should not be able to check their transmission oil in their vehicles. I'm not saying that the guards are not justified in the older equipment, but let's go the manufacturing source to stop the

problem before it becomes a problem to the whole country.

On 3/15, at our Mount Carroll, Illinois quarry, while an MSHA inspector was doing an inspection of our stripping crew, the inspector starting checking out backhoe and the operator's statements follow.

Sean, who is our backhoe operator, was sitting in the backhoe and the inspector got up on the tractor of the machine and asked Sean if everything worked. He also asked if a safety stop was on. Sean said yes, that it was engaged whenever the machine is idling, if the machine is not moving. The inspector argued so Sean explained it again. Then the inspector asked about back-up line. The inspector asked Sean to back-up. Sean refused until the inspector got off the machine. He got off and back-up on the tracks and asked Sean to do it again. Sean said he would be glad to but not until he got off the machine. Our operator was following the correct procedure, why try to mislead or intimidate an operator that might become confused when a Federal authority figure starts to confront an operator. I know for a fact, I've got a couple of guys that just due to politeness, if somebody with authority comes up, would probably do as asked. Sean was a headstrong kid and he did not.

On 4/25/2000, during an inspection of our dredge plant, the inspector observed a private contractor get into our loader in the stockpile area, and load his own truck without fastening his seat belt. The inspector told the lead person for the dredge that he could write him a personal citation for the contractor not wearing a seat belt. The lead person has no control on who comes in or out of the load-up site and the lead person in this situation had about five years of mining experience and about three months as lead person for us. He came back to us not knowing whether or not he wanted a different position. We're having enough troubles getting

and keeping help that I feel that personal attacks of this kind are unnecessary. If this is now going to be the standard, our safety director needs to be brought up to speed with this and adjustments will need to be made.

Item 3 brings me to Item 4 of maybe a more personal note. But I felt we were notifying MSHA in good faith about the untimely death of our safety director, Roger Housengate. He passed away on 10/25/99 after a very brief illness. We called the Peru office to notify them of this. The next day, on 10/26/99, an inspection was pulled at our Mount Carroll quarry. This added to our already grief-stricken schedules and Roger's absence. On 10/27, Chris had to go to the closing prior to Roger's wake. Again, I'm not disputing the inspection but I took it as a personal violation that when we try to operate in a safe manner that we do and have the record that we have and the inspection on 10/26 after notification of Roger's death, in my eyes, it was a very untimely and not a "work together" attitude.

While still in the process of advertising and interviewing for the new safety director, on 3/14 we had a plant inspection at our Four County quarry by Cedar Rapids. While closing on 3/15, our acting safety director, Chris received a call that an inspector was at our Garrison quarry for an inspection. When this inspection was near completion, Chris received a call that an inspection was going on at our Mount Carroll quarry in Illinois. Three different inspectors came in one day.

At Wendling Quarries, our policy is to have a member of our safety team be present for the inspection. The purpose of this is to be able to pass along new changes, new regulations along to the rest of the company so that we can be prepared and be current. On 3/16 Chris had two closings from the previous day and she got a call that our Moscow quarry was being inspected. She had to miss one of

the closings. Again, it is our philosophy that to take advantage of the MSHA visits and be consistent a member of our safety team needs to be present.

Consistency is also something that is very troublesome. On 11/17/99, the Warish plant was being inspected and no citations were found. We shut the plant down for the winter at this time. On 3/23/2000, a complimentary inspection was done by the same inspector on the same plant and six violations were found that needed attention before we started up for the season. It is extremely hard for our operators to be consistent if we can't be shown consistency.

A stockpile truck that was being used was checked by an MSHA inspector for gauges. The transmission gauge that we installed was not working at the time of the inspection. All the gauges that came with the truck at the time of new purchase were working properly. We had to show that one was ordered for the truck to remain in operation. This gauge was mounted in there for us, we wanted to monitor the temperature on the new style transmissions to help us determine the life expectancies of them. My thoughts are if the air pressure gauge is working for the stopping ability, the water, oil and miscellaneous should be the responsibility of the producer, if they take care of the engine, as long as safety is not sacrificed.

In conclusion, these items that I have listed are the main highlights of several others. I want only for the system to be fair to all. The common sense solution to problems to be economically feasible and the number one goal of maintaining the safe environment that we now have established.

J. SCOTT GEORGE: Five inspections in three days, is that right

STEVE YERINGTON: I think it was more than that in about seven days

but, yes.

J. SCOTT GEORGE: And these are out of this same office?

STEVE YERINGTON: Peru.

J. SCOTT GEORGE: So Thursday and Friday when they're handing out the schedules, they know, the supervisor has to know?

STEVE YERINGTON: One of these was scheduled, the Cedar Rapids area was.

J. SCOTT GEORGE: So four of the five were?

STEVE YERINGTON: Yes.

J. SCOTT GEORGE: I found it interesting when you were talking about the inspector's cars. I'm going to go out and look at the hood on the truck. As I understand it and correct me if I'm wrong, all the safety regulations as of 1996, I think, apply to Congress and the Administration so the safety violations you're talking about would also, I think, apply to an administrative worker. I could be wrong though. These are out of this same office? I know OSHA applies to commerce.

STELLA OLSON: Then let's change it.

J. SCOTT GEORGE: The inspector coming to Sean who was running the backhoe is one of the regulations you cannot run.

STEVE YERINGTON: That's correct. He was standing on the tracks of the machine at the time he wanted to do that.

DAN MORGAN: Thank you. Doug.

DOUG HANNA: I work for the L.R. Falk Construction Company, it's a small, family-owned and -operated company. Safety is stressed at all times to the employees on and off the job. We've always had

annual safety meetings along with toolbox meetings periodically throughout the year. I had been involved with MSHA at that time, to me, guarding was to prevent accidental contact with pinch points or any dangerous moving parts. At my last inspection, 4/5/2000, I was told that all moving parts had to be guarded to prevent the intentional contact. Also, at this inspection we were cited for equipment that had been inspected for the past six years with no citations and some, as far back as 15 years. None of these citations that I received involved a work area either.

We have been cited for berms along the elevated roadway. The roadway was elevated approximately eight to ten feet without going over a culvert. The area was approximately 30 feet long, the posted speed limit is 15 miles per hour. However, when the truck turns on to the county road, it can travel 55 miles an hour and the ditches are 6 to 15 feet deep. If MSHA had control over the nation's highway system, all elevated roadways would be closed until berms could be constructed! I wonder what the speed limit would be.

I feel the interpretations of the laws have changed over the years and this makes it more difficult for the producers to comply. The inspectors should be allowed to work with us rather than citing every assumed violation.

J. SCOTT GEORGE: Out of the Peru office?

DOUG HANNA: I'm out of both, I've been inspected from Peru. I think at one time they came into our area because they said that the Fort Dodge office wasn't keeping up so they graciously came over and inspected us.

ALONZO HARRISON: You said that the interpretation has changed over the last few years. Is there an influx of new, trained inspectors or are these the same people that have been there ten or 15 years?

Did the personnel change or just new people.

DOUG HANNA: I personally feel it's coming from above. I'm not so sure it isn't coming from the Assistant Secretary of Labor.

STELLA OLSON: Say that again, please.

DOUG HANNA: J. MacAteer, I believe his name is. When the Highway Bill was passed, I can't remember exactly when, it was quite a bit of money. He basically said then that the more money you give this industry, the more people it killed. Essentially, he decided he was going to get some of that money. That's my personal opinion.

J. SCOTT GEORGE: I'm not sure I understand. You said that at your last inspection on 4/5 you were told that all moving parts were to be guarded to prevent intentional contact?

DOUG HANNA: Yes.

J. SCOTT GEORGE: I take that to mean that someone intentionally would?

DOUG HANNA: Our moving part that was underneath the frame of the plant behind the dual wheels. The only way you could get to it would be to crawl on your belly to get there and then raise your arm. And then all you could do is hit the moving chain because the pinch point was guarded on the other side.

JOANNE STOCKDALE: You say MSHA replaced who?

DOUG HANNA: There was the Mine Enforcement Safety Administration.

JOANNE STOCKDALE: What year was that?

DOUG HANNA: '78. And they did work with you. They would come and tell you well, we should have a guard here.

JOANNE STOCKDALE: Where are you located, where are your plants

located?

DOUG HANNA: North Iowa.

JOANNE STOCKDALE: So you probably have the most experience of being inspected by both Fort Dodge and Peru in the last two years? I mean have you been inspected by both?

DOUG HANNA: Yes, I have been inspected by both.

JOANNE STOCKDALE: Some of the implications of some of the people we were listening to is that a lot of the difference occurred when they switched to Peru. Are you seeing that or do you think there was a total change?

DOUG HANNA: My last inspection was out of Fort Dodge and they did these basically ridiculous citations.

JOANNE STOCKDALE: So they increased their citations also?

DOUG HANNA: I think so.

J. SCOTT GEORGE: So it's not necessarily one particular office.

DOUG HANNA: Yes.

DAN: I'm Dan. I want to touch on that Peru, Fort Dodge thing a little bit because it seems that we're headed that way. I just returned from working at a mine in Virginia for the past two years and this mine is currently running on a six-year term without a lifetime accident, a very safe mine operation. Yet the number of citations they're receiving and the severity of citations that they're receiving has ultimately increased. So though Peru may seem more problematic than Fort Dodge, it's up the chain a little bit than that, I think.

DAN MORGAN: Don Smith.

DON SMITH: I want to thank the Board for allowing us time to be here. My name is Don Smith, I'm the Safety Director of Cessford Construction. We're a small, family-owned mining operations with headquarters in Iowa. Most of our quarries happen to be in southeastern Iowa and so we see the inspectors from Fort Dodge, not recently, but we have been inspected both out of Fort Dodge and out of Peru.

Basically, I'm just going to elaborate on what my predecessors have said. They touched on a lot of the same points. MSHA, the Mine Safety and Health Administration oversees the safety of the mines in this country. The mining companies for the most part have been very cooperative with the inspectors and continue to do so. However, mutual cooperation between us and MSHA suffered.

In the past we've always felt that we could come to an agreement or at least talk to the inspectors about the violations and citations but MSHA's cooperation disappeared. The change occurred about two years ago and we are uncertain as to why but we would like to know why.

Mine operators and owners have been aware for some time now that MSHA regulations we work under are vague and ambiguous. This leaves many gray areas that are open to interpretation by the inspectors. As we've seen, the aftermath of the MSHA inspection leaves us wondering where the cooperation went.

It seems that every inspector has his or her own interpretation of the regulations. This generates a noticeable lack of consistency. There are many examples of citations being written, violations that apparently weren't violations in the past inspection or past several inspections. Many producers today can give examples of inspector's decisions that directly contradict the decisions of the last inspector of the operation. We at Cessford can give several examples.

We received eight citations for not having guards on return rolls when we had just been informed by an inspector two weeks before that they were recommended, but not required. We were cited at the same time for having insufficient guards on conveyors that were exactly identical to another conveyor at the same operation that was acceptable to this same inspector. No difference.

Recently the operators and producers have seen their citations total for one inspection double, triple or quadruple over the last two years. Some producers have had as many as 40 citations in one inspection at the same location where they may have had two or three the year before. Nothing has changed at the site except the new policy MSHA is operating under. Those regulated by MSHA operate under a penalty point system, the more citations you accumulate, the more penalty points you get, the more points you have, the higher the minimum fee for the citation.

Under normal circumstances the basic fee is \$55 per citation unless it's deemed significant and substantial, a bad word for us. Then it can go much higher. There are some producers that have so many penalty points now that even the most basic citation is \$1,500. Until recently the MSHA inspectors had the respect of the producers and the workers but there has been an increase in the cavalier attitude of some of the inspectors. Inspectors arrive on site and begin the inspection without identifying themselves. This creates a very dangerous situation for both the inspector and the company.

When they have been asked to report in at the office or scale house, replies have been "we don't have to tell anyone anything" or "I will come and go as I please."

As most of them arrive in their own vehicles, it is difficult to separate them from employee or customer traffic. It would appear to us that many of the new inspectors do not interface well with the public. Superintendents or other company personnel that escort

the inspectors have been threatened with the most severe personal citations for either escorting them or asking questions of the inspector during this inspection.

Cessford has been cited for violations that did not occur. As we found out, MSHA can write citations if they believe a violation has occurred, even if there is no evidence or personal observation by the inspector. This is being guilty until proven innocent. If there is no observation or evidence of the alleged infraction, how can you prove that you're innocent? This would appear to be a violation of Constitutional law. For a disgruntled employee, this is the perfect venue for a little revenge. There is no tolerance for even the most minor violation as interpreted by the inspector. This may be to the agency's policy of strict liability. Condensed, this means that there are no accidents and no acts of God. Someone is responsible and there will be a citation written.

Think of it like being pulled over going one mile-an-hour over the speed limit in a 70 mile-an-hour zone. The option to issue a warning or give the producers a chance to correct the situation has been removed. There's a little story that goes around in the quarry of an inspector that arrives on site and is being escorted around by the safety director. Just about that time a severe thunderstorm blows in. As the two are heading for cover, lightening strikes a garbage can right in front of them, blows the lid off about 100 feet away. The safety director is glad nobody was hurt turns to the inspector and says wow, that was a close one! The inspector agrees and says yeah, that's right, I almost missed that garbage can not having a lid, that's a violation. And it is a violation not to have a lid on your garbage can. This kind of illustrates the "gotch'ya" that Mr. George was speaking about. There is little or no consideration given to the mitigating circumstances surrounding a citation or an accident. There is no consideration given for the past safety record, only for the past

violation.

These are just a few of the reasons. The mining community is concerned with the direction MSHA is taking. Some people say MSHA has become nothing more than a regulatory law enforcement agency. I think MSHA has become confused in the goal that it was meant to achieve in mine safety. I believe the intent of MSHA's reduced accidents that prevent fatalities to the best of their ability without using questionable tactics or overstepping Constitutional or civil law. The best way to achieve this is through cooperation with the mining community, fairness in judgment and consistency in the interpretation of the regulations. That's all I've got.

DAN MORGAN: Thank you.

STELLA OLSON: Very good.

GAIL McDONALD: Great.

DAN MORGAN: Kalen Schlader.

KALEN SCHLADER: My name is Kalen Schlader, I'm with Greene Limestone Company. We're located in north central Iowa and we're a company that's gone 20 years without a lifetime accident. We work hard to keep our people safe and strive to keep the work environment safe. We're a small rural company and we're small enough to be working with our friends and our relatives and our neighbors.

I guess we like all companies deal with tight budgets, governmental regulations and production schedules and it's almost impossible to achieve 100 percent safety efficiency. Our goal is to send our people home to be with their families each night. In the short time we've been dealing with MSHA, we've noticed that there has been no change in MSHA and we're beginning to wonder what their mission statement says. I have to wonder if our company's safety

program is going to be better if I pay a \$400 fine for not adequately guarding something that our people wouldn't put their hand in in the first place. Of if they're going to be safer listening to eight hours of what MSHA says I have to teach them. It seems we spend more time with paper trails, paying fines, guarding, monitoring and red tape than we do listening to our employees and trying to motivate them to work safely.

80 percent of all accidents are from unsafe acts, only 10 to 20 are from unsafe conditions. So what we're wondering is why MSHA is coming in every year and fining us? They keep hitting each company. It seems to us it's like spanking your child before you give them an opportunity to understand what they're doing wrong or without giving them an opportunity to correct what they're doing wrong. Wouldn't it make more sense to work together with the mining industry to come up with innovative ways of educating and promoting safety instead of creating a sometimes hostile environment where only government knows best?

I guess I've got a couple of examples of what we faced over the years with MSHA inspections. First of all, I'd like to say that I do have some numbers from our company. We've paid \$5,773 in the years in fines from 1997, 1998 and '99. So far this year in 2000, we still have one crew. We're up to about \$1,600 right now and we haven't even gone through any reductions on that.

Like a lot of the other guys have said, 1998 was a year we got inspectors coming in from Peru and we did have a bad experience with one. This inspector came in and gave us 40 citations, over \$2,000 worth of fine assessments. It was one of those inspections where you know the guy has had a bad day when he gets there. He was whining about having to be so far away from home, he was telling our guys how he had just broken his leg and then he turns around and writes 23 citations out of the 40 that stated, "An

individual could suffer a broken bone injury."

The same inspector, he comes around during the inspection, he kind of snuck off by himself and snuck into one of our generator trailers, a big semi-trailer, it's got a big generator motor in the back and he snuck around the side of this and had his old trusty tape measurer out and was measuring around in there. He got his tape measure sucked into the fan of this big generator and he didn't tell anybody about it and we didn't find out anything had happened until later on in the day. The area he entered was a restricted area, that was marked and our guys now have a proper procedure for going into that area. The inspector just kind of snuck in there and was snooping around.

Another thing we face with this guy was we had some citations on handrails and there's a standard that says "crossover, elevated walkway, elevated ramps and stairways shall be of substantial construction, provided with handrails and maintained in good condition."

We got citations because we didn't have two handrails. We had a good handrail and a nice set of steps going up into our tool trailers. Common sense tells you if somebody goes into a tool trailer, you're probably going to be carrying a grease scone in one hand when they come out of there and grab the handrail on their way down. If you've got two handrails, one of them is not going to be used anyway if you've got a good set of steps. Just silly things like that.

After he got done writing almost all of them 40 citations, he turned around and cited four of our foremen for being incompetent and for negligence. Our foremen sure took offense to this. These mine foremen had over 25 plus years in the mine, each. And at the time of the inspection we had over 18 years without lifetime accident. So this is just one example of what we faced.

We were appalled by the inspector's behavior and frustrated with his interpretations. So we did send Senator Grassley this, the inspector's boss and I included the letter in there for you to read. I've covered some of what was in there.

The worst part about all of this running into one inspector with his interpretations of the law and his bad attitude is this goes down on our history and we're still paying for that 1998 inspection because of the history carried over to the years that followed for all those citations. We got a couple of things we've had to. Well, it wasn't this inspector, but we had a old Cat dozer that we kept off to the side to use for emergency purposes only. It was a manufactured ready piece of equipment, it might have been old but one inspector wanted us to take a piece of screen and put it over the whole side of the engine compartment because somebody might take their hand and stick it in the generator belt or something.

We've gotten fines and citations for light bulbs not having a guard on them. They weren't turned on, according to the citation, but somebody might break that and they might get hurt. So we still had to pay for it.

Last year we ran into an inspection of county. It was under a Federal flood disaster proclamation. We had a whole crew that got caught in it overnight, the whole crew, I mean all the equipment. The only thing you could see in that whole quarry was the top of the 988 loader. It was underwater due to a flood. They called it a flood disaster, we took everything into the yard, locked it off, barricaded it off. We hired an electrician, certified electrician to come in and this area was all marked and it wasn't good enough for the MSHA inspector, we still ended up paying fines. It was kind of one of those things that kind of bothers you, you're in a bad situation and then they come in and still zap you.

These are just a few things that we faced and after a few years you

kind of get frustrated over the treatment you've faced and you kind of wonder whether you might as well just budget a couple of thousand dollars each year for MSHA while you're at it.

The ultimate goal for us is to protect our miners and sometimes it appears to us that MSHA's goal is to justify their own existence relying on us to fund their agenda. Sometimes it's hard to believe that someone in Washington or in Duluth can sit in an office and know what's best for a small mining operation in northern Iowa. You can go anywhere and find something that's unsafe, you just have to do your best to protect your people. You can train them and educate them and pray that nothing happens. We feel we can do it without the government using up our safety budget. I want to leave you with a quote from our last MSHA inspector. "I know it sounds silly, but if you can intentionally put your hand in there, then it can accidentally be done." If you could intentionally walk out in front of a bus, should the bus have a guard on it? Thank you.

GAIL McDONALD: Do you all belong to the National Alliance Association at all?

KALEN SCHLADER: The National Stone Association.

GAIL McDONALD: I was just curious. I thought they might keep some statistics on the industry. Is it your view that the numbers of people in this industry are declining or are you an industry that's growing?

KALEN SCHLADER: The trend in the industry clearly is consolidation.

DAN MORGAN: Come up here so we can hear you.

RICH WHITE: I'm Rich White and I'm the Director of the Iowa Limestone Producers Association. The question was are mines

growing, are a number of mines growing? I think certainly in the Midwest the consolidation has been pretty dramatic and so there are fewer and fewer small mines.

J. SCOTT GEORGE: That kind of leads to my next question which is in all the limestone quarries, are there some what I would call big business limestone quarries? You have many, many, what we've been hearing from today is small businesses. But are there big businesses in this?

RICH WHITE: Yes, there are some big companies.

J. SCOTT GEORGE: Are they getting the same level of attention?

RICH WHITE: I believe there was written testimony even though it's a Small Business Administration issue, some of the larger companies felt that this was not their place to speak. There was written testimony provided by one company that's larger.

J. SCOTT GEORGE: So it's pervasive. Not only small companies but large companies are getting the same extreme increase in citations?

RICH WHITE: I don't think it's probably fair for me to speak for others too much but I believe that to be the case.

STELLA OLSON: I have a question. What other regulatory agencies are you answerable to, do you come under?

RICH WHITE: I think I'm going to let Joe McGuire step up here and address that because Joe works with this on a day-to-day business. If he wouldn't mind, Joe, do you mind?

JOE MCGUIRE: Good afternoon, I'm Joe McGuire, Sussman Construction. Regarding your question about other regulatory agencies, Iowa air quality delegation of new source performance standards that we fall under. But I can assure you most of those agencies, we have absolutely no problem.

STELLA OLSON: Do they have inspectors as well?

JOE McGUIRE: They do inspect. If we have problems, we can go to them, we can work with them. Some of the Federal agencies can learn from some of the State agencies, I think, on how to cooperate. I'm sure there's other agencies, the State mining group that we work with. We never have a problem with those folks, if we have issues, we work them out.

I've got a couple of comments. You've heard enough of the stories but if you listen to what was said today, consistency and individual interpretation are main issues. I don't have to say which one of the states is represented by one of the Board members here, but I would venture to say that from Nebraska to Missouri, if you call the Kansas aggregate producers, if you call the Missouri Limestone producers, in Nebraska you could talk to their representative agency down there. I got a feeling you will not hear these kinds of stories. I can assure you as we stand here, I've been in towns down in those states that were inspected at the same time we were receiving citations. We were getting citations for things that they do not get citations for. It's a fact of life.

STELLA OLSON: Are you making more money than they are?

JOE McGUIRE: No. But I can assure you there's more consistency between state-to-state and much less within a state. Again, if you had an opportunity to check with the organizations like Rich represents, Missouri Limestone Association and so forth, I bet you, you will not find complaints like we're getting here.

Our insurance carrier received a call from one of his clients a while back. He was in a quarry doing a little job for one of our producing members. This particular group of individuals was going to cross the quarry and they had an individual in the back of the

pick-up. The MSHA inspector said ah! you're not the miner here, you're on my property, I'm going to cite you for that, which he did, for having an individual in the back of the pick-up, which is a no-no. I thought it was interesting when the gentleman called our insurance carrier who represents us too and said what's the deal, can they do this? That inspector told him there's kind of an attitude, a little bit, that's going on around. He says well, we got more power on the mine sector than the FBI or CIA. That's a little bit of the attitude.

During one of the inspections we had last year one of the concerns I had was -- and I think I'm in a position to speak because I've been in the profession for years so I can kind of judge people's behavior and stuff. But I can speak for some of our employees after the inspections we had last year. I don't think I've ever seen such a lousy attitude about safety and safety issues and inspections as among our employees after those mining inspectors were in there. They went from up here down to the gutter. They had a negative impact on the safety and on the attitude of our employees and I didn't appreciate that on behalf of the Peru inspectors. It's not all the Peru inspectors, we've got other ones out of that same office that are just fantastic to deal with. Again, the consistency issue even within an office, they can't be consistent. I don't know what's going on, maybe somebody else, maybe they can check it out.

We don't have problems with regulation, you know, we'd sure like to see it be reasonable. I don't think that's asking too much.

STELLA OLSON: Every company has their own safety program in place?

JOE MCGUIRE: Yes, ma'am.

STELLA OLSON: It's all written and documented?

JOE MCGUIRE: Yes.

DAN MORGAN: We'll take a short break for just a few minutes. First, I'd like to recognize Becky Lane from Congressman Boswell's office.

BECKY LANE: I'd also like to point out that we do have some people here today from the OSHA, from Consultation Group and also from the Department of Economic Development. I won't take time right now, I'll introduce them later for consultation, to help with regulatory problems. They are here. Why don't you three or four stand up so if they want to grab you during break, they are to help with regulatory problems within the State. Then I'll introduce them later. I could take a break.

[Recess]

DAN MORGAN: We have testimony from two individuals who signed up, walked in on the meeting and we appreciate them coming. I'll remind you that for this part, testimony is limited to two minutes. The first one is Steve Intelkefer. Tell us who you are and your company and all that.

STEVE INTELKEFER: My name is Steve Intelkefer. I'm with the American Testing and Training. We are a very small business of two people. The consulting firm does most of the asbestos regulations and our focus is on air sample analysis, bug sample analysis and training for asbestos workers.

My chief concern has to do with regulatory compliance for the State of Iowa itself. It has to do with those same set of regulations which we teach and talk about. The State of Iowa is not doing a very good job of enforcing the regulations on itself. In particular, regarding again the asbestos shop regulations, 40 CFR Part 61, Subpart M, it's part of the Clean Air Act. We don't have

the same luck that the miners had, that they've had good state agencies. With most agencies, I would agree, the State of Iowa does a good job. The asbestos contractors are paying huge fines for what are minuscule violations, in my estimation. They may take out 200 tons of asbestos, for example, but a small crumb the size of a fingernail would be found and they'll get a \$10,000 fine.

The basic problem with this, as far as fairness and flexibility is concerned, is there's very little or no attention given to the gravity of the situation or the size of the company, very little flexibility in that regard.

The two major concerns, again, to reiterate, it seems like when you've got a problem in one area, they've got a "gotch'ya attitude." They're not really that much interested in helping folks to determine how to do things better but only let's get out the book and let's write this thing, let's make it a violation, notice of a citation of sorts. Not much in the help category.

As far as the enforcement of rules against themselves, I brought the number of violations to their attention, probably 70 over the last five years. They have issued four or five notices of violation to themselves and they've ignored the rest. That particular attitude, their attitude is that they don't have to enforce regulations on themselves.

In March of this year, I visited their archives, I collected ten more violations and I sent it to them in March of this year. I sent a copy to Pete Hamlin, the Director of the Air Bureau, asked him if these were violations, suggested that they were and I asked him to issue a Notice of the Violations to the Department of Natural Resources because one of their employees had sent these paperwork violations in and they were incorrect.

If the same folks that are out in the private sector, the asbestos

contractors, they had sent these in, each one would be given a notice of violation. I have not heard back from them, I don't expect to hear back from them.

In addition to that, I went to find and look up some information with regard to the four or five hours that they had issued to themselves and they had been removed from the archives. So I asked him where they were, he said he thought maybe the attorneys had them, he didn't know. I wrote a letter a month ago asking for those, if they had gotten the information back and I have not heard from them yet.

DAN MORGAN: You need to summarize.

STEVE INTELKEFER: Okay. So what we're saying is that there's a different standard for the State agencies as it applies to regulations for themselves and applies to the private sector. We're concerned about that. It's a little bit like the fox in the hen house, we really don't think that they should be investigating their own complaints that are filed against themselves.

J. SCOTT GEORGE: Questions. I want to make sure I understand. This is a state agency?

STEVE INTELKEFER: A delegated authority by the Environmental Protection Agency.

J. SCOTT GEORGE: EPA has delegated to the State?

STEVE INTELKEFER: That's correct.

J. SCOTT GEORGE: And what you're talking about is no flexibility with regards to the size of the company or the seriousness of the fine?

STEVE INTELKEFER: Correct.

J. SCOTT GEORGE: And that they themselves, you've identified 70 potential violations to them and another ten perhaps, and as far as you know, they haven't done anything about it?

STEVE INTELKEFER: They refuse to act.

J. SCOTT GEORGE: Any other questions.

STEVE INTELKEFER: I would give this information to you?

J. SCOTT GEORGE: Yes, please.

GAIL McDONALD: Sure.

J. SCOTT GEORGE: Would you give it to John.

STEVE INTELKEFER: Sure.

DAN MORGAN: When EPA delegated the authority, isn't there a national thing that says that any Federal agency that delegates to the State must also assume the SBREFA?

STEVE INTELKEFER: That's a recommendation for 2000. I believe that was one of our top five recommendations.

ALONZO HARRISON: A quick comment. On the delegation, are theoretically Iowa's requirements more strict than the EPA guidelines that were supposed to be and that's why they got the delegation?

STEVE INTELKEFER: They adapted the NISHA requirements verbatim basically.

JOANNE STOCKDALE: Verbatim.

J. SCOTT GEORGE: So they have to be as strict or more strict to delegate, as I understand it.

JOANNE STOCKDALE: I don't understand. Give me a for example.

STEVE INTELKEFER: Like the contractors send in four or five notifications that he's going to do a renovation or a demolition activity. On the fifth one, he'll get a fine for \$2,500 for making paperwork mistakes. I have identified at least eight right there.

JOANNE STOCKDALE: Give me a specific, DNR specific, paperwork mistake?

STEVE INTELKEFER: The Asbestos NISHA requires that there be at least a ten working day notice be given prior to a renovation or demolition activity in the standard. This gives the inspector, the EPA or the DNR an opportunity to come out and visit the site, determine whether or not there's enough material there or if there's not enough material that they would have the threshold responsibility and the jurisdiction. And the State of Iowa actually had ten or so houses they were going to knock down right around Des Moines here and the notification was filled out by the Department of Natural Resources employee, I believe from the General Services Administration, and they sent it in, it was only an eight working day notice. Now, if that had been an asbestos contractor, he'd be looking at \$2,500 a shot.

JOANNE STOCKDALE: I understand now. I wanted specifics.

DAN MORGAN: Any other questions? Thank you very much.

JOANNE STOCKDALE: Counsel, when the Federal EPA gives the right to enforce the EPA standards to the Iowa DNR, is that true that they are not covered under SBREFA or isn't that still in question?

STEVE INTELKEFER: When you get comments from small businesses about an enforcement activity, basically, we define it as a Federal regulatory enforcement activity and we don't say Federal agency as with the Health Care Financing Administration, we had a lot of comments about their intermediaries and actually those are private

companies. So who the agent is for the Federal government doesn't matter for us to have jurisdiction. So if the State is the entity that's enforcing something on behalf of a Federal agency, then we'll hold the Federal agency accountable for those actions and then they'll deal with the State the way they deal with the State. But the ultimate responsibility lies with the Federal agency that is charged with enforcing that law.

JOANNE STOCKDALE: So Iowa DNR, when they're doing that, if I'm correct, should have to comply and give the small business the information that's needed or answer any of their questions?

STEVE INTELKEFER: I think it depends on the facts, the particular facts and you'd have to look at it and make sure it was indeed a Federal regulatory.

JOANNE STOCKDALE: It's very confusing.

STEVE INTELKEFER: First of all, we'll look at it and if it looks like it could be indeed a Federal regulatory action, we'll take it to the agency. It's for them to refute that to show us why it's not indeed a Federal regulatory action.

JOANNE STOCKDALE: Okay.

DAN MORGAN: Thanks, Steve. Also Jeff Intelkefer. Are you Steven's brother or is this a common name?

JEFF INTELKEFER: Yes, I am. If you hear that name, we're related. My name is Jeff Intelkefer and I have a small business as well. It's an asbestos removal business in eastern Iowa. It's called Affordable Asbestos Removal. What we basically do is go in to homes or buildings that need to be renovated or demolished and remove the asbestos. You can look at if you go to Rat Pack & Plant in Duluth and there can be asbestos blowing all over the area for years and they're not required to do any removal there. The law

states that there is no requirement for not allowing that stuff to blow all over the country.

Once I step on to that job site, then if I leave one thimble full of material on that site after I have given my notification and go on to that site, then I'm liable for a \$10,000 fine. You can knock down a building with 160 linear feet or 260 square feet of material, it's perfectly legal to do, but if I go in and remove 20 tons of asbestos, if he comes in and finds one eraser-tip full, I get cited \$10,000. The more that I try to refute these issues, the more adversarial the relationship becomes with the Department of Natural Resources and our company and, therefore, we're sitting in a very tough situation considering that the inspector in the State of Iowa, as well as the two attorneys, that set out the notices of violations are also the people that do the enforcement. So when I go into litigation, I'm dealing with the very same people that gave me the notification. Which should not be right.

I was at a hearing dealing with OSHA and I had the Administrative Law Judge, the Departments from OSHA as well as the attorneys for OSHA and the DNR all riding in the same vehicles down to the hearing and were having a gay old time laughing with each other regarding an issue that dealt with me. So I don't think that there is any impartiality regarding this issue and these people are all working in the same office buildings, what have you, and I just find it very difficult to get a fair shot unless I go up to the District level or to the Supreme Court to get any satisfaction. I just wanted people to be aware that that situation exists in my industry and it definitely needs to be looked into.

J. SCOTT GEORGE: I need you to summarize now. Sorry.

JEFF INTELKEFER: I guess that's all I needed. I didn't really prepare a two-minute speech.

J. SCOTT GEORGE: It's hard to give a two-minute speech.

DAN MORGAN: You can also submit anything that you didn't add that you'd like to add, just mail that in.

JEFF INTELKEFER: Okay. Thank you.

J. SCOTT GEORGE: Thank you, Jeff. Is there anyone else that can stand up to individuals? There also is two individuals who were not able to attend, who submitted written testimony. Rosemary Mufflo, Executive Director of the National Meat Association. She spoke with us last year and this is an update. I'd like that read into the record.

Also, a presentation by Kim Austrachio , Director of the National Meat Association who submitted comments. I'd like that read into the record too.

David Nielson, it's time for the agencies. David Nielson, Director of RCA Enforcement. Is he here? Oh, Dave Acherson, I'm sorry, I didn't read it right.

DAVID ACHERSON: Resource Conservation and Recovery Act. Good afternoon. My name is Dave Acherson and I do work for the Environmental Protection Agency and after sitting through all this testimony, I think my goal over the next 20 minutes is to successfully get out of town without being tarred and feathered!

Frankly, I do really enjoy and am appreciative of the opportunity to come speak with you today. I really am a firm believer that we bureaucrats in Washington definitely need to get out of our offices more, need to come out in the real world and kind of hear what the effects are of our regulations. I can you tell you as someone who spends most of my legal career writing regulations that what makes sense in my cubicle in Washington, in my computer, when we hear the stories about what the real world impacts are, it's just very, very

important for us to get feedback on what things make sense in the real world.

And, frankly, I am not only a writer of regulations but also a consumer of regulations and get equally angry when regulations do not make sense. I hope you will not report this story back to my office in Washington.

One of my pet peeves is I would really like to meet someday the guy that wrote the regulation that required the dead man lever in my lawn mower. So every time that I have a branch or something that I need to bend over and get, that my lawn mower shuts off and I have to go back and turn it on. So I have to admit that I'm the first one to disconnect the dead man lever in my neighborhood but I will deny that statement if it's ever attributed to me.

I had prepared statements but rather than wade through them, I just want to hit four of the highlights. I gave a copy to your counsel here and he'll provide you with the formal copy of it. I really would like to touch on four points and then open it up to questions from the panel and the audience.

First of all, I'd like to talk about the lead poisoning problem in the United States. Frequently when we look at regulations, we look at all the things that are required by us Washington bureaucrats to do to meet the requirements that Congress that has set out. And we really lose sight of why the Congress passed the statute to begin with. When I tell people that I write lead regulations in Washington, the typical response I get is gee, lead poisoning, wasn't that a problem back in the '70s and didn't we take care of that when we took lead out of gasoline and lead out of sodder? The response is we did take care of a large part of the problem but, in truth, a huge problem still does exist. The latest CDC estimates are that 800,000 children in the United States suffer from elevated blood levels. Lead affects virtually every system in the body, it

can cause mental retardation, it can affect the neurological systems of the body. It really can have very, very severe effects on children depending on the level of dosage. More than half of those effects are permanent effects, they're not reversible.

The thing that really shocked me is, my training is as a lawyer, so I really had no technical background and I'd hear a scientist talked about what levels cause problems. It really doesn't make sense to me when I hear about 60 micrograms or 60 milligrams, it doesn't make much sense to me. So I've asked a lot of my technical people to kind of give me some real world examples of how much lead really does present a problem. Two statistics I'd like to just leave you with in terms of describing the problem.

One is the amount of lead, a lead paint chip that is required to produce an elevated blood level in a child. I expected that the number would come back that, you know, a child would need to eat a whole cupful of lead paint chips. But the answer came back that a single thumbnail size chip of lead, if consumed by a child under age 6, will produce an elevated blood level in that child.

To look at it a different way, if the child in a more typical exposure scenario is not that there are paint chips out there, we initially thought when we were first looking at this problem that most of the problem were kids actually eating the visible size paint chips. But what it turns out is the paint, when you open and close windows, you open and close doors, microscopic pieces of lead create a dust that fall onto the floor, children fall on the floor and it gets on their hands and they put their hands in their mouth. That's the most common exposure pathway. I asked on a daily basis how much dust would a child have to get in their mouth to produce an elevated blood level. The answer that came back shocked me, the answer was the size of a lead article equal to a grain of salt. So we really have a very potent poison out there and one that is

producing very severe effects and one that still has to be addressed.

Let me talk second about what the rule does require. I'm sorry Mr. Weiss isn't here because in his statement of what is required by the rule, there were a few things that he did state that are incorrect. He did state correctly that our definition of renovation is very broad. If you disturb and if you own a 1978 house or apartment building and you disturb more than two square feet of paint, you are considered a renovator for purposes of this rule. We admit that is a very, very broad standard and pulls in all sorts of trades people who do not consider themselves to be renovators but when you look at the minute amounts of lead that can produce these very serious effects, we felt in writing this regulation that we had to include a lot of these trades people that don't really consider themselves to be renovators but do, in fact, disturb amounts of paint that can produce serious effects.

The requirements are really simple. What Congress asked us to do in 1992 was to write a regulation that said before you engage in any renovation in a pre-1978 house, the renovator must give the person that owns or lives in that dwelling a lead pamphlet which describes the lead problem, describes how lead poisoning occurs and describes the different techniques you can use to avoid lead exposure and poisoning. So it was a very, very simple rule on its face. When I first started implementing this rule, I looked at it. I said well, this has got to be one of the most simple rules that I have ever been involved in and this rule is going to be a snap to enforce, to really implement, and to get the word out about. Well, again, my naivete showed up and when I started hearing some real world effects, especially in large apartment buildings, it was clear that we had some work to do in terms of interpreting the regulation so it made sense in the real world at the same time that we made sure that tenants were receiving the information that they

needed to protect their children.

Basically, the requirements can be stated in three different scenarios. The first scenario is if you have an owner-occupied house, to comply with the rule if you have an owner-occupied house or owner-occupied condominium is before the renovation starts, you knock on the door, give a copy of the lead hazard pamphlet to the person and ask them to sign a receipt. When you do that, you've complied with the rule.

Alternatively, if you don't want to go to the house physically, you can send the pamphlet to the person via the mail and record that with a certificate of mailing.

The second situation is in a tenant-occupied scenario, such as an apartment buildings or rented single family houses. To comply with the rule there, again, you need to notify the owner of the building or the house and you need to provide the same pamphlet to the tenant. Again, getting the tenant to sign a receipt and you just retain a copy of that receipt.

The third scenario is the one that Mr. Weiss spoke about and this is where he made a misstatement. If you're in an apartment building or in a multi-family building and you need to do a renovation that disturbs lead based paint, you don't need to provide a pamphlet, a copy of a pamphlet to every single one of the residents of that apartment building or complex. All that they really require is that you give some form of notification to the tenants either in a newsletter, in a building insert, in certain situations we allow you to use placards but you just need to provide some form of communication to the tenants about the nature and duration and location of the renovation and all those descriptions can be very broadly defined so you can cover multiple renovations in a single notice. So that, in a nutshell, is what is required with the rule.

Let me just talk about what we've done in terms of compliance assistance and outreach because I know that was an issue that several Board members were real interested in hearing about. I think we've got a real good story to tell in terms of the efforts and activities we've done. First of all, in terms of compliance assistance, really the backbone of our whole program in terms of outreach is this booklet here and for those of you who are interested, I have about another 200 copies of this. So please take a copy so I don't have to take it back on the plane tonight. This book is written in plain English, they didn't let any of us lawyers look at it until it was almost finished, so it was written in language that Washington bureaucrats don't typically use. It contains several quick reference charts in parts of it. All the key terms are color-coded and it has a glossary in it. I think if you look through it, you'll see that we really tried to make this as reader-friendly as possible. I also want to point out that we've got several sample forms to use which can be torn out or photocopied and makes compliance very simple. It's just a matter of filling out the form.

Also, another tool that we're really proud of is what we call a compliance advisor software. I don't know if any of you have ever used some of the tax preparation software where you avoid your accountant by just buying this \$30 piece of software and you type in all your information and it spits out your tax form. Well, we tried to do the exact same thing with this rule, obviously, much, much simpler than the tax code, we hope. But based on a series of questions that it leads you through based on the size of the house, the year of the house and various other questions it asks you, it will give you an individualized printout telling you whether or not you're subject to the rule, and if you are, what steps you need to take to comply with the rule. You can access this software currently through our web page, I'll give you the address of that

web page in a moment, but you can access it through that. For those of you who are a little bit paranoid and think that by tuning into our web page, we're going to trace it back to you, we're also going to be putting that in CD form that you can obtain through an independent source.

The third area of interpretative compliance assistance is in our interpretive guidance. A couple of areas I just want to point out real quickly. We got asked the question many times from landlords that say well, my tenants will never sign anything from anybody so how am I going to get them to sign this form and can I even find them at home. We thought about that problem a lot and realize that they had a good point, especially in the New York City area, any time anybody asks somebody to sign something, they think they're being sued. So we wrote into the regulation a provision that essentially allowed the renovator or the property manager to self-certify that the pamphlet was delivered. So they try to make the delivery, the tenant either is not there or is there and refuses to sign, the person making delivery can still leave the pamphlet there, certify it with one of our forms in here that on such and such date, I did make the delivery and the person refused to sign but I did make the delivery. End of story, you're in compliance.

Just one more example from the interpretive guidance, in a seminar like this we had about eight months ago, I got a question from somebody saying I've got a common area in my building, a rec room and I'm going to do a renovation in it but I can lock that room for the duration of the renovation. Do I still need to provide a pamphlet to everybody, not pamphlet, a renovation notification to everybody? My initial answer was yes, under the regulation, you do. And then I sat down and thought about it more and I thought about the wording of our regulation, our Congressional mandate and I went back and looked more closely at our regulatory language, then spoke with our general counsel and they did give approval for

us to write an interpretative guidance that exempts those types of scenarios where you're doing a renovation in a common area and you can close off the area, either if you lock doors or you can even erect some temporary barriers and we give guidance on what exactly you need to do to follow the many exemptions. So with that give and take, we realize that we have written a better regulation, one that does make sense in the real world and also it does accomplish the end result that Congress had in mind when they directed us to write this regulation.

Let me just finish up by talking about what we've done to get the message out about this regulation to the people who are subject to it. When we first sat down to develop plans, we particularly realized that this regulation, because of the fact that small business was very different than most of the regulations the EPA writes, if you're regulating the tail pipes of cars, essentially you get on the phone to six companies and you pretty much let everybody know what's going down.

In this case, we'd have to make about six million calls to reach everybody directly, so we realized very quickly that there was no way using traditional methods of going through the Washington Trade Association and Washington lobbyists that we were going to be able to get the word out to everybody. So we had to come up with some creative ideas about how can we get to these small contractors. We had done a lot of work in establishing outreach partnerships with four different types of entities. In terms of trying to get at the contractors, we've established some partnerships with wholesale suppliers of renovation supplies. We approached about 60 big hardware stores, national chains, the general building suppliers, the window manufacturers and a whole host of companies on a national and regional level who have a lot of direct contact with them and asked them will you help us get the word out about this regulation. So far, we've gotten 20 companies that have said yes,

we will, we realize it's an important problem and we will help get the word out. So we've got Home Depot, we've got Duran Paints, we've got Benjamin Moore Paints and we've got several others, like Sherwin Williams, that are working with us. Hopefully, these flyers that you see, these single-page flyers, through that avenue will reach the hands of, we're hoping, at least a quarter million contractors.

We also worked real closely with trade associations and unions. The unions we worked most closely so far with are the National Association of Remodeling Industry and the Painters and Decorator Contractors of America. But we're also trying to establish similar relationships with electrical unions, plumbers, carpenters and other renovation organizations and we're hoping to be equally successful with them.

Our last and third and fourth area where we're trying to get contractors, and this is an area where we also try to get landlords, is through the local licensing and permitting authorities. Our goal in the next three to four months is to have enough of these flyers circulated to the various permit issuing authorities, that you will not as a contractor be able to walk in to apply for a plumbing license, electrical license or a building permit without seeing one of our flyers. We really think that, you know, this is another really effective way of getting it. The biggest problem there, of course, is how decentralized the whole system is in terms of issuing permits and licenses. But we're working with several of the national umbrella organizations, national association of county and officials and, hopefully, them as intermediaries will enable us to get the information out to a lot of these offices.

Lastly, in terms of getting the property owners. It has been a little bit easier. They do have, at least the larger property

owners, do have several organizations, the National Multi-Housing Council, the National Association of Realtors, the National Apartment Association of which Mr. Weiss is a member. They have been very helpful in getting the word out about the regulation and we've supplied the National Apartment Association with a copy of the booklet for every one of their members and they had agreed to send it to every single one of their members last year.

We have ten regional offices. We've held probably upwards of 50 meetings across the country with groups of contractors and property owners and we have engaged in a lot of give and take and have received a lot of very good input about what we're doing wrong and what we're doing right with this rule. Frankly, a lot of times we heard a lot more about what we were doing wrong than what we were doing right. I think we really have been reaching out to these various stakeholders and, in many respects, can achieve the goals that Congress wanted us to meet and at the same time make the rule have more common sense, everyday reality in the world.

That's basically all the points I would like to cover. In closing, let me just talk about our website. Our website does contain not only copies of all the information that I have here today, but also we've got two versions of our interpretative guidance that have come out and a third will be coming out shortly. We've got all sorts of background documents on lead poisoning, how to obtain a lead contractor. Incidentally, one of the other points that Mr. Weiss had mentioned was the difficulty in obtaining a lead free certificate. That was the first time, frankly, I had heard people say that they had difficulties because I work with the certification firms every day and they are only too pleased to go out and do an inspection and try to help somebody obtain the lead based paint free designation and get them out from under our regulations. So at least this is the first that I've heard that that was a problem. The website's address is pretty easy to

remember, it's www.EPA.forward/lead. That website is contained in the booklet and in the flyer too so if you forget it, please pick that up on your way out. We also have for those of you who are not yet on the Internet, we have the old fashioned 800 number. It's 1-800-424-LEAD. So with that, I'd like to open it up.

JOANNE STOCKDALE: I'd like to ask you about the fines that he was talking about, \$25,000. Can you enlighten me on that?

DAVID ACHERSON: Sure. I am not from the enforcement office but I do work closely with enforcement attorneys. I did want to make a few points on that, I'm glad you brought that up. Number one, yes, EPA does have authority to levy fines under this law of \$25,000 a day. Does EPA ever levy such fines against small businesses? In my 16 years, I've never heard of them coming anywhere close to levying that type of fine against a small business.

Let me say, this \$25,000 fine is actually a relic of the way that Congress designed the statute to deal with lead. They inserted it in a larger statute called the Toxic Substances Control Act which was aimed mainly at the Dow's and the DuPont's and the big chemical companies. So, yes, that is a big hammer and, yes, that is officially in the statute that this rule is part of. But it's virtually unheard of for EPA to give that type of fine to a small business. Any fines that are levied, if it is a small business, the fine is cut drastically and they also take into account the ability of a particular company to pay.

Let me say also, too, that this regulation officially was passed in June of 1998. Because we realized as an agency that getting the word out to companies, small companies, would be difficult, we delayed the effective date of the rule for one year and said, you know, we're not going to enforce this, the rule will take effect June 1, 1999. Shortly before June 1, 1999, we realized that, hey, we still have work to do in terms of getting the word out and we

adopted what we call the Compliance Assistance Period, which added another year on top of the first year in which we said during this second year, we're not going to really bring enforcement actions. Our main focus is going to be on bringing people in compliance assistance, we're not going to engage in the gotch'ya type of arrangement, as it was termed earlier. The compliance assistance officially ended June 1st, two weeks ago.

I've talked very closely with our enforcement people, I mean I have lived, ate and breathed this rule and I realize that the worst thing that could happen to EPA in terms of getting public support behind this rule is for us to go after small business people and people who have no idea that this rule is even out there, let alone be able to comply with it. The worst thing we could possibly do is to find small business people and go out and go after them. So the enforcement response policy is still being written, but they've all assured me that in virtually every case that is going to be brought over the next couple of years, that there is going to be no fine levied for first-time violators unless there is some really egregious circumstance.

JOANNE STOCKDALE: So they're telling you and you're going to still be around five years or ten years from now that no first-time violators will get fined, I hope?

DAVID ACHERSON: Yes. Barring some egregious circumstances.

JOANNE STOCKDALE: I don't know where you're from or what kind of background. Did you come from a rural area or a city?

DAVID ACHERSON: I'm from Rochester, New York.

JOANNE STOCKDALE: I'm from rural Iowa and driving county roads, if I do it right, I don't go through a single town between here and Des Moines, which is about 200 miles. I can do that. And we don't

have a union within 90 miles of us. I agree that the plumbers and electrical union in New York and maybe in Minneapolis and Chicago and those places, can get the word out. We also don't in Iowa, I don't believe all electricians have to be licensed. Building permits are pretty easy to get into certain areas. I still venture that if I ask, I don't know if anybody still knows about this law. So then my next question would be you're the EPA and again, I don't understand the delegation of the EPA into Iowa. Is this going to be enforced by the Iowa DNR? I mean how is this going to be enforced in my state?

DAVID ACHERSON: I'd have to check on that. I don't believe this particular rule can be delegated to states but very few states have been interested in enforcing this particular rule so I believe it will be the Federal government. But I have heard that Iowa actually does have a fairly active lead program on a State level, so I don't know what their plans are in the future, if they intend to seek delegation of this program.

JOANNE STOCKDALE: Linda King, would you mind standing. You're with the Iowa Department of Economic Development and you're a small business liaison for air quality. Have you heard of this program before?

LINDA KING: I have heard of this program. I know on a State level, there is information available. I don't know if it's through our Department of Health. I know our Department of Natural Resources is short on funding and short on staff and that if they do not have to promulgate that, they will not.

JOANNE STOCKDALE: It's based upon whether or not they get funding at this point. Were you aware then, also, when Mr. Weiss talked, the new one is coming in September 15th. This one concerns me because, again, in my rural area that I'm from on the subsidized properties that he was talking about, now that one hasn't come out

yet. That doesn't go into effect until September 15th. If it's a HUD subsidized property or any kind of Federal subsidies to buy the property, that you have to do extensive testing? You're not aware of that?

LINDA KING: I don't know.

DAVID ACHERSON: I'd have to plead ignorance on that. That rule was written by HUD, it's their rule. I'm not familiar with all of it.

JOANNE STOCKDALE: That has nothing to do with this?

DAVID ACHERSON: EPA does not have any.

JOANNE STOCKDALE: That one really concerns me, again, because of the lack of affordable housing in rural areas of our state. I've taken my share. I've got lots of questions but I'll stop.

ALONZO HARRISON: I'll piggy-back in. I understand the guidelines for HUD with regards to the new law that's coming out but at the same time, they are utilizing the ones established by EPA. So the guidelines are being established by EPA in terms of what is the accepted level of exposure and the issue here is that if you cannot get that information out to the folks who are going to be affected, small one or two person businesses, it's not an excuse, but I think there's an issue here how do we address that if you're not doing a good job and getting it to folks who need to know.

DAVID ACHERSON: I think the fact that we've recognized that in adopting this enforcement strategy that the first-time violator, especially a small business first-time violator, is very, very unlikely to ever get a monetary fine.

ALONZO HARRISON: The thing is that you've got one that came out in 1978 --

ALONZO HARRISON: And then you keep piling on new regulations. The question posed by Mr. Weiss was if you're not an attorney and you're just a person buying a four-plex or something of that nature, how are you expected to know all this information? You wrote it and you're not even aware of what HUD is doing which is utilizing a lot of your data, EPA data, to determine or make their laws which, basically, tie right in. Even though I understand it's a medley of people who are involved.

DAVID ACHERSON: Right.

ALONZO HARRISON: Builders, renovators, owners and all that sort of thing.

DAVID ACHERSON: Well, again, I mean we are never going to be able to -- when we got a regulation that's affecting individual small businesses, there were originally not enough resources to notify everybody individually. So we do the best we can. For example, the example that I gave in terms of trying to go through the Home Depots, trying to go through the Ace Hardwares, whatever. We're trying to be as creative as possible on that.

At the same time, I guess the point I would like to make with respect to especially lead paint is if you're a landlord and you really are not aware of the potential liability that you have in terms of lead paint, and I'm not talking about Federal liability, I'm talking about common law liability. If you're a landlord and you don't take care of lead-based paint and one of your tenants gets lead poisoning, really the Federal lead laws are the least of your problems in terms of your potential liability. In terms of I've got a colleague who has a nephew who was lead poisoned at about age two, the child is now age six. That child has the vocabulary of about a two-year old, and is still not diaper trained

and is facing probably a lifetime of special education and special needs. As a landlord in most states, if your negligence has caused that type of liability, you're in a lot of trouble in terms of the legal system in the United States. What we require as Federal bureaucrats really is the least of your worries in many respects.

ALONZO HARRISON: See, those are legal issues and you're talking about something that's legal and medical. The thing here is that that is not an acute term, it's chronic. So it takes a period of time for ingestion, inhalation or absorption.

DAVID ACHERSON: It can be either acute or chronic.

ALONZO HARRISON: Well, the point is if it's acute, then you'll know right then. If it's chronic, you're talking about a long period. So the thing is somebody may come in and sand and paint the window sills and the kid comes in and they dust it and vacuum it out, and the kid comes in and eats some dust and doesn't get sick for six months or a year, two years. How are you going to track back to the person who did the work and they may be gone or out of business. So I mean those are other issues and the thing we're talking about is those things that are relevant to the small businesses, relative to their ability to understand the new law, the changing law and then the compilation of the additional things that keep coming down. And that's where it is terribly important that these records are good, that we need to find a way to get it to those people who are in business and have the liability.

J. SCOTT GEORGE: The comment that you made is, you know, EPA doesn't have the resources to contact every renovator and doesn't have the time or the resources. I think you can talk to a group of limestone people out here who say that they don't have the time and resources to guesstimate, anticipate and determine every nuance and regulation that might be laid on them by NISHA. The EPA has been given high marks for notification and when we go back in our rural

areas and ask them, we find nearly no one knows. You've got to understand that we're not allowed as small business people to use the excuse that we didn't have the time, resources and budget to know every single regulation. So that excuse isn't acceptable to us. It's reasonable, it's not acceptable. But you don't have the resources to notify every single contractor in the nation, that's reasonable. I can't imagine how you can do that. But the point of the fact is that you've got a regulation that affects nearly every landlord in the nation and nearly every shade tree plumber and electrician in the nation and even in going with the national chains, the wholesaler, the hardware stores and the national card stores, you only have 30 percent of them that have agreed to work with you on this. That's way below the level of compliance that we're required to have as small business people when an inspector shows up at our door.

DAVID ACHERSON: Well, a quick point. That 30 percent doesn't represent 30 percent of all the businesses in terms of total value. That was one-third of the people that we approached who agreed to work with us.

J. SCOTT GEORGE: That's right.

DAVID ACHERSON: That doesn't mean that only a third of the renovations, supply stores in the country are going to have that. I mean with Home Depot alone, we think that that one outlet hits a lot of Americans. But, again, I mean we understand the problem and we wring our hands every day about how do we more effectively get the word out and we're very open to suggestions on other ways that we can.

One of the other avenues that we have hit that I talked about in my testimony is publications targeted to small business people. We've worked very closely with a lot of the publishers of regional and trade publications that deal with local and regional real estate

matters and we've put out dozens of articles to many of those, so we tried to reach them through those avenues. Frankly, if there are other ways that we can get the word out, we're more than happy to listen to them.

STELLA OLSON: I have a question. In listening to whether these regulations came into effect, as a small business owner, if I'm going to issue any kind of regulations to employees or change in the way I structure my business, I would prepare things like this as soon as it goes into effect. This booklet was published in September of '99 and this flyer in March of 2000. So I think it's kind of like after the fact that this kind of information has been published. It seems to me that the EPA has a responsibility to get this kind of information published immediately if they're going to put forth such a regulation.

DAVID ACHERSON: In terms of the handbook, actually we did have a version of that, a non-published version of it, a photocopied version of that available when it did go into effect.

JOANNE STOCKDALE: But renew it.

DAVID ACHERSON: We sent out, you know, a lot of copies of that to all different organizations, we put it up on the Internet, you know, we got the information out.

JOHN: One of the things that EPA has done in terms of reaching out to the National Ombudsman's office, over the past year actually, hopefully, if we do have a conference in D.C., one of the things they'd like to see is using the Boards to help them with some creative ways to reach small businesses. This isn't the first time they've told us that they don't have the resources to reach every small business.

I think the other point on the guidance material, we've had several

comments on HUD and the Department of Justice on just that issue, that some of the fair housing rules that went into effect, the guidance material didn't become available for about eight years after the effective date of these rules. So that issue is a major issue and I don't think, at least in terms of the comments we've had, is limited to EPA.

STELLA OLSON: Probably not.

ALONZO HARRISON: The concerns, you know, are great that there is a high level of awareness. But the problem that generally happens with small businesses is not a small guy dealing with you. It's a person in the field. The trickle-down philosophy of communication, and I think Bush calls it Voodoo Economics when they were talking about it some time ago when he was running for President, is that it doesn't really work. It's trying to get the information down through some kind of a trickle-down philosophy or theory of getting information or dissemination of information. It isn't one that's been effective now for us to sit here and say, well, here's how you do your job. It's a little ineffective for us to do that because we don't understand what is your job, what is the intent? It is to handicap our compliance with something that, one, we don't understand, we didn't create.

In some cases, if we're abaters, I do a lot of abatement, our company does, well, then, you know, why are we held to a higher standard than some of the people who were inspecting us who really may not understand the rules or the application of the rules and yet they will give us large fines. I mean we were fined, in one case, \$7 million for a non-friable asbestos that was a tar. They said well, it's friable and so we're going to fine you. Ultimately, it got waived because it was nonsense and it wasn't accurate. But the point is that they still fined us and we had to defend ourselves. How do you defend the indefensible? Those are

the things, I guess, that bores the ax of a lot of small people, the guys in the field who are doing the inspection and the leniency or the intention of the folks who write these things.

DAVID ACHERSON: I fully understand that there are renegade inspectors out there, I've had more than my share of -- I had a full head of hair when I first started this job. I've had a few inspectors who are just loose canons, they take some incredible, literal interpretations of that and I've had to spend weeks of my time undoing some damage that people in the field do. So I understand that. After going through that several times, what I did personally was establish a monthly conference call with all our inspectors so we're at least trying to get some uniformity and trying to get everybody realizing, hey, the goal is not to check off the box, you know. In one particular instance, we have a lead warning and this particular inspector was trying to cite somebody because a printer had inserted an explanatory word in the language. The word was "lessor" and the printer tried to help readers understand by saying that the lessor is the renter and so people would understand that. One of our inspectors said well, the rule says it has to be word for word and that's not in compliance and I'm going to cite this guy. I just went ballistic about that, I said, you know, talk about not seeing the big picture. We were able to undo that before any enforcement actions were brought, but through that experience, I understood that you get a few inspectors out there who abuse their authority and really do not look at the big picture, you know, can really create havoc and, frankly, can make the whole agency look bad. So I think we've tried to institute these monthly conference calls where everybody is reading off the same page and things like that don't happen.

GAIL McDONALD: Hi, Dave. If it's so toxic to children, I assume it's toxic as well to adults at some level?

DAVID ACHERSON: Yes. It's a gray question of exposure. It's a twofold answer. It is more toxic to children because of the rapid development of their brain and their various body organs. So they are more susceptible. But the real big issue is exposure. Adults don't usually go around licking their hands, licking their toys and licking walls. So it's really a question of who is going to get the lead in their mouths and ingest it because normally lead doesn't go through the skin very readily. The only way you can really get it is by ingesting it. Occasionally we'll get an adult who works with lead, picks up their ham sandwich and eats it every day and doesn't wash their hands and they will get dosed. But by and large, the biggest exposure that we see is to children.

GAIL McDONALD: Is it a problem in water supply?

DAVID ACHERSON: It really is in a few municipalities, it is. A few municipalities do have lead water pipes but, by and large, the biggest exposures are really the lead from soil. A lot of that is left over from the 50 years of lead we had in gasoline. Soil became contaminated through the exhaust and lead from paint, the soil outside of houses that had been scraped numerous times and all the lead gets in the soil and gets tracked through the house. So water really, in some instances it is, but it's not the biggest contributor.

By the way, if you do drink tap water first thing in the water, you do want to run your tap for about 15 seconds before you actually take the water that you're going to drink because the regulations, I guess until recently, still permitted faucet manufacturers to use leaded solder in their faucets. So if you get up in the morning and water has been sitting right in the faucet all night, the first cup or glass that you get out of that is going to be pretty high in lead. So be sure to run the tap water. Free advice!

DAN MORGAN: Do the EPA inspectors, is there a process within EPA

for transferring and firing? What's the length of time of an appeals process from an individual who files an appeal with a rogue inspector?

DAVID ACHERSON: Well, I'm a little bit out of my league on that not really being an enforcement attorney. But my understanding is if the case is brought -- first of all, I think a case like that, we, at least in the initial couple of years that this regulation is going to be enforced, we at headquarters are reviewing virtually all of the enforcement actions so we would pick up something like that pretty quickly.

But when we heard about this one, we realized that, you know, this was so ludicrous to begin with that we just wanted to, before they even thought about bringing an action about this, nip it in the bud.

So there is, I think, a built-in mechanism, at least for the first couple of years in this particular regulation. After that, if you are cited and you disagree, you think it's a rogue inspector taking an unreasonable interpretation, there is several layers of appeal through EPA. There's, I can't cite all the specific steps, but I know that there are several layers of appeal before you ultimately are told that yes, you did break this rule.

JOHN: I want to also add because we asked EPA to send an individual with expertise in the lead paint rule and so I mean, I guess one of the things that they asked me to make out a disclaimer before Mr. Acherson spoke, but I'm making it afterwards. So he is not the SBREFA expert within the agency but when asked whether he wanted someone with expertise in the lead paint area or a SBREFA expert. And, also, his office has suffered, a lot of his colleagues, there's a lot of personal loss in the office lately so there is some extreme issues there. I know that the National Ombudsman and the Board greatly appreciates your coming today.

J. SCOTT GEORGE: Are there any other questions, anyone in the audience want to ask a question or have an issue? Anything else from the Board? Thank you very much.

DAVID ACHERSON: Thank you.

J. SCOTT GEORGE: Agriculture. Anyone here from agriculture to speak? I know it's approaching five o'clock, small businesses don't quit at 5:00 so we'll just keep going.

DENNIS GREENING: My name is Dennis Greening and I'm the District Manager for the Food Safety Inspection Service located here in Des Moines, one of 17 offices throughout the country responsible for the food safety inspection of meat, poultry and egg products activities. The District of Des Moines encompasses Nebraska and Iowa and the people in the policy division in Washington asked me to represent them, I guess, in the agency. Thank you for the invitation. At least I didn't have to fly out!

JOANNE STOCKDALE: Why don't you introduce the others, there's three others with you.

DENNIS GREENING: Yes. I have Dr. Abdullah is the Deputy District Manager in the Des Moines district. Martin Hickman is the Assistant District Manager for Enforcement and Mr. Richard Wyndale is our Consumer Safety Officer, Asset Coordinator for the district.

JOANNE STOCKDALE: No travel budget!

DENNIS GREENING: No travel budget. Basically, I guess, the testimony that I submitted has a response to the ten recommendations. I am assuming that will be read on the record?

JOANNE STOCKDALE: Read into the record, right.

DENNIS GREENING: So to give you a brief update, we have about 8,000 FSIS inspection personnel who provide continuous coverage in

our meat and poultry and egg products establishments throughout the country. In Region 7, the Heartland region, we have over 1,200 FSIS personnel in some 540 establishments and 17 egg processing establishments. The states of Kansas and Iowa also have a state meat inspection program that is at least equal to the Federal government's. We provide an oversight to those state programs.

90 percent of the establishments that we're in are considered to be small establishments in the category. We categorize those by any establishment having more than 500 employees as a large establishment and less than 500 would be the small and very small is ten or less.

One of the biggest initiatives that we've had to date is the package and reduction, Hassup push that was implemented in 1996. We started that implementation over a three-year period starting with the large plants with 500 or more employees, then going to the small plants and in the very small plants this past January. The Hassup Initiative tries to clarify and strengthen the responsibilities of meat and poultry establishments and provide an oversight to those establishments and let them control their activities in these establishments instead of us being in the command and control mode. So basically Hassup says it's your establishments, it's your records, you decide how you're going to provide a safe food product for the consumer and we'll provide oversight and look at your plans and your records to see that that's done instead of us telling the establishments how to operate.

Basically, as I said, the very small plants, in small plants we implemented Hassup. We went out and contacted personally at least six times in the last year each very small plant to make sure they understood Hassup. We provided materials for them in work sheets. Our technical service center is in Omaha, Nebraska and it's

available to industry as well as our inspection people to provide them technical guidance and leadership and we made those opportunities available. I think our Hassup implementation this past January, we had a lot of concern from the very small plants and I think nationwide it was implemented with very few problems, not that there wasn't problems along the way, but I think we are trying to work with industry.

Anyway, other than the ten recommendations and that's in the record, if I can answer any questions or comments from anyone?

DAN MORGAN: I notice that you say that you have a contact now in FSIS?

DENNIS GREENING: That's Dan Engel.

DAN MORGAN: When did he come on?

DENNIS GREENING: He's been in the agency a number of years, in the Office of Policy. I'm not sure when they gave him that duty.

DAN MORGAN: Was it within the past month or so maybe?

DENNIS GREENING: He's been with the agency longer than that.

DAN MORGAN: Who he's been with out of SBREFA, a contact for? We've been through, I think, three of them in the past two years within USDA so I was pleased to know that there is finally another name even though it's a new name so we can see one. Have you had contact with him, John?

JOHN: No, we haven't. I think that that may be one of the issues with the USDA and the FSIS may have its own representatives and the other agencies or subagencies within the department, they may not all be towing the same line in terms of regulatory fairness.

DAN MORGAN: Congratulations, now we have a name I can write or we

can correspond to. Last year, Rosemary Muffler of the National Meat Association presented testimony concerning rogue inspectors and this was a case out of California, not out of Region 7. And you know and I know that there are good apples and bad apples. But Rosemary sent me testimony to have put into the record again today and it deals with the issue of last year and it's coming out of California inspector. It seems as though we have a double standard here. An FSIS inspector can shut a plant down immediately for whatever violation it may be. And then you the plant owner, if you begin to file appeals, this one has been going on for over a year. Well, if FSIS can shut me, the plant, down immediately, why can't we have a more expeditious route for appeals from us as plant folks or plant owners appealing to FSIS?

DENNIS GREENING: I can't speak for that individual. I know we have met with industry when we were implementing Hassup and other initiatives. We do have an appeals system for industry against inspection personnel that I know is monitored and I know as a district manager, we're told that we need to react to industry issues and concerns in an expeditious manner and not let the thing go on. I know we've taken inspectors out of plants pending inquiries, not wanting to place blame until we know the facts but we have reacted to that. I don't know in that situation.

DAN MORGAN: Well, we need to come up with some kind of game plan to solve the problem rather than just switch an inspector into another plant because that really doesn't solve and you know and I know, maybe there's one bad one out of 20. But it sure creates hell. So first off, there's an expeditious way.

And then, I'll even give you a copy of Rosemary's testimony that she was going to give today. Another issue is the new salmonella performance standard that has been implemented and how that affects the beef industry as compared to small businesses, as compared to,

for example, you're aware of the testing procedures here. We've got to figure out a way that is rather than just another issue here. And if you're a plant owner, whether you're a large plant or a small plant owner, and you have to, correct me if I'm wrong, you collect 53 samples over a course of time, a six-month period course of time, USDA collects those. USDA will not give you any information whether it was testing positive or negative during that course of time and you as a beef producer are allowed to have five positives through 53 samples. Well, if you've collected 25 samples and you've got four positives so far, you're getting ready to be shut down. Why can't FSIS tell you, the plant's owner, that hey, guys, you got four positives out of 25, you're getting ready to have a real problem. So we've got to figure out something to do. But it's all kept very secret until, all of a sudden, you pass the magic number 5.

DENNIS GREENING: I think we tell them. We get notified in advance and we call the plant owner and notify them of where they're at in the process. So we're not waiting. But we do contact them.

DAN MORGAN: Okay, okay. Here is some more testimony that was coming from Rosemary about that particular case.

JOANNE STOCKDALE: Doesn't that seem strange then that Des Moines would tell and California -- I mean shouldn't you be carrying the word back to --

DENNIS GREENING: We get notified from the lab, you know, and then we have in our directories, it tells us here is the procedure to follow.

JOANNE STOCKDALE: But it's just the same that we were hearing today. It would be nice if we were consistent and California consistent. I think it's great that you tell but doesn't it make sense why can't we tell everywhere. It's kind of like the

limestone people in Iowa having stricter rules than some people in Missouri or Nebraska.

DENNIS GREENING: I think that goes with what we've also been trying to change our inspection systems to have no surprises so that when regulations or regulators are in private industry, it should not be a surprise to us or them when anything occurs. We need to share that information and I think we're trying to do that, apparently, we're not there yet, of course.

DAN MORGAN: I think from having toured a few California plants, they have much bigger problems there than we have here in the Midwest. But what a problem it can create for us!

ALONZO HARRISON: I wanted to talk about in your response, you responded to the recommendations for 2000. We greatly appreciate that. Thank you very much.

Let's talk about Recommendation #5. By the way, it's on Page 4 at the bottom of the page. The thing that was just handed out. The USDA paraphrased our recommendation and the recommendation is agencies shall make full use of Federal law that prohibits giving false information to the government or using the government as its tool unjustly retaliating against employees. And then it goes on and talks about agency notify individuals of their legal obligations to give truthful information and penalties for giving false information. The last sentence, "agency staff should be well trained in evaluating the probability of such information."

This recommendation was put in because we were hearing testimony, not only in this region but in other regions, about individuals, disgruntled ex-employees who were filing false affidavits with agencies and with Federal investigators and, as many of us know, it's a felony to lie to a Federal investigator. Yet, when we asked the agencies last year, not one of them could cite one example

where the full use of the Federal law against, that prohibits filing false information with the government, had been applied to anyone. I remember receiving personally three of those, I'm a little bit more sensitive to that than others might be.

In your reply, you chose to address the third and, frankly, the most minor part of it, which was that agency staff should be well trained in evaluating the credibility. I appreciate that in itself, that effort. What we were after with that recommendation was that agencies would be rigorous in dealing with individuals who blatantly gave false information in order to instigate an inspection. I think from some of the testimony last year on the USDA, if memory serves me right which it may not because of this gray hair, there were people who testified that they felt the inspectors were there because of past employees. That's what we were after with this recommendation, not just the training. I wish the USDA would go back and address this. I appreciate that you did this. It looks like on some of the other recommendations, you really are striving and we thank you very much. This particular one, we'd like to see some more information if you wouldn't mind sending that along to us.

DENNIS GREENING: We'll get back to you on that.

J. SCOTT GEORGE: Any other questions? Any from the audience?

DAN MORGAN: How about passing on Recommendation 7. "Agencies should use internal offices that work with small businesses to inform small businesses about their rights to regulatory fairness." Well, I know there's a website link. We all go out and send a flag periodically to say when this stuff is available.

DENNIS GREENING: I think the bottom one there, it says it's just beginning to disseminate information specifically. So I don't know that that initiative has been accomplished yet.

J. SCOTT GEORGE: What we'd be looking for in that particular where you're training your own people is information. I think what in the entire regulatory attorney's program is you train your individuals, it would be really good as they're walking in to inspect, say, a small packing plant. One of the things they do when they talk about the scope of the audit, that this is the basis for me being here. And, oh, yeah, let me brief you, plant owner, on the rights to regulatory fairness and hand out the brochure that John is holding right there so that both parties start off on the same foot in this particular area. I had an OSHA inspection after OSHA had already said, oh, yes, we've trained everybody. I had an OHSA inspection and we went through the beginning, you know, who are you and what's your scope and what's your basis, which was an erroneous complaint filed by an ex-employee. I said well, are you going to brief me on my rights to regulatory fairness and he goes, "what's that?" Now, we've already given them high marks for training everybody so I said well, this is what it is, would you like to go through it? And I laid all this information out and we went through it. He said this is good stuff, this is the right thing! We went all the way through it and I answered all his questions and we closed all that up and I said okay, you know, when would you like to do the inspection? He said I'd like to do it right now and he went right through the whole plant. He found one paperwork violation, no fine. You know, I would hope that the USDA would try to achieve that level and I think then you'll find that things would go much better between the inspectors and the others. And you'll find your few rogue inspectors, your bad apples.

By the way, in small business, the other employees were given the opportunity to seek employment elsewhere, usually fairly quickly and I encourage that.

DAN MORGAN: But you may have to take the dissemination of information all the way to the upper levels of USDA. For example,

when Dr. Coupa was suspended effective immediately, all export certification to Europe last summer with no notification to folks. Well, guys, if you send a letter to the NCA, AMI and a couple of poultry guys, that does not cover the industry, you know. So we may have to start at the top and at the bottom.

J. SCOTT GEORGE: Anyone else? Thank you.

DENNIS GREENING: Thank you.

JOANNE STOCKDALE: I'd like to take an opportunity before everyone leaves to recognize one other individual that's here. Steven Slater. Steven, if you could stand up. You're from the Iowa OSHA Consultation.

STEVEN SLATER: Yes.

JOANNE STOCKDALE: The reason, and very brief, when I talked to the NFIB Executive Director of Iowa, I'm not a member of NFIB, but I am a member of the Association of Business and Industry and they would also say the same thing. Anyway, I am not a member of that and he has a lot of things to say about regulatory reform needed in Iowa. But one of the things he commented is that the Iowa Waste Reduction Center, which does voluntary audits for EPA issues, and the Iowa OSHA Consultation Group are doing a very fine job. I was told by Board members that, as we try to push, we need State SBREFA now too. Could you quickly tell us what to do and I've got things up here that I can pass out and very quickly.

STEVEN SLATER: First of all, I'd like to thank you personally for notifying us and inviting us to come. If I could just take one brief second. Manuel Onita, who is the head of the enforcement section, with the Federal section for OSHA, is with us today. And Ms. Bryant who is the OSHA administrator for Iowa is with us as well. I'd like to thank Linda King for participating and involving

herself personally with Iowa OSHA and Consultation, in particular in helping promote up the small businesses as they come into the state of Iowa.

I'm the Project Manager for the Consultation and Education Section. We don't issue penalties and fines. The only time you'll ever see it is if you would invite us in. Now, why in hell would you invite a regulatory agency in? Well, part of the reason is, I think, it's what Joanne alluded to and, again, I think we have a very good service that can be of benefit to small businesses. One of the first things I've learned is that after visiting with small businesses, one of the things that they have had to focus on first, is first they have to have money and worry about the IRS. Secondly, the EPA because of penalties and fines that might be imposed. And, thirdly, the other regulatory agency with probably the least amount of penalties involved is OSHA. Again, we don't involve ourselves with penalties or fines, we only come in to work with you, we provide ten-hour training, we work with your employers and the employees to develop programs that they may need. We have a large video reference library that's available to you at no cost. We'll send out tapes and so forth to you. We look forward to working with you. But, again, the only time you'll see us is if you fill out a request to have us come into your facility. Frankly, after sitting here today and listening to this, I'm a little bit disturbed or concerned that the other regulatory agencies, and if they do, I apologize in advance for this, because they don't have something similar to this, or they could go out and work with MSHA and so forth to go into facilities.

One of the first things I learned right up front is, you know, the regulatory agency is smart to identify the things that people are doing right as well as what they need to do to improve. I would ask for any of your input. I'll leave my business card. If you think that there is some way that we can improve on the services

that we provide or I can contact you or meet with you for any meetings, to promote our services to your colleagues and small businesses, I'd love to.

Additionally, one thing that was brought out, I think Mr. Kuhlman when he mentioned the fact that they have .68 rate, I think that's outstanding!

JOANNE STOCKDALE: That's outstanding.

STEVEN SLATER: I hope I can work with you with OSHA and what we do and I think we'd get along very well and I think you'd like our services. Unfortunately, I don't think we fall into your jurisdiction but any questions, you call, I'd love to help you with anything informally. Thank you.

JOANNE STOCKDALE: Linda, did you have anything else you wanted to add at all?

LINDA KING: I'll just speak briefly. I'm part of the Department of Economic Development. We have a regulatory assistance team available to all businesses. I work specifically with small businesses on air quality issues. If you do have a question about OSHA, the Department of Transportation, USDA, EPA, any other acronym you can think of, we are designed to help businesses streamline communications for folks and also streamline the regulatory process.

This brochure is the first one that explains a little bit of what we do. We also have someone in place that helps businesses with immigration issues as well. This brochure has index cards for both the University of Northern Iowa and my programs, all of our services are free and they are not regulatory. Basically what we do, we cannot negate a fine, we cannot circumvent regulations that are currently on the books, but we can help businesses understand

what they need to do under those regulations and help the communication process of law.

Also, to let you folks know on the Board and I did speak with you when you were in Omaha last year, there is a small business ombudsman and also a small business assistance program available for every state in the nation, including the two territories. So for you folks who are not familiar with the people in Region 7, it would be a good idea for you to get in contact with our people in Kansas, in Missouri and in Nebraska, if you call on the phone, they will forward you on. And I will e-mail those contacts and the contact information to Joanne and she can disseminate that to you. There is also a Federal person, her name is Karen Brown, and she is in Washington, D.C.

J. SCOTT GEORGE: Linda, is it part of your charter or the charter of your organization to work with small business groups that may be having difficulty like with MSHA, can you get involved in that situation?

LINDA KING: We can get involved in that. Right now, one of the big projects we're involved in is the Grain Processors Group that's having communication troubles and permanent troubles with our Department of Natural Resources and we're trying to work that out. We hired a Federal mediator to come in and discuss those issues. So if there is something that we cannot bring a resolution to, we will certainly try everything we can to do that and for the Grain Processors, we're bringing a mediator in. We think that will be much more effective to have a third party that doesn't have any kind of an issue.

We'd be happy to work on any regulatory issue that any business may have whether you are large or small. Thank you.

DAN MORGAN: Anyone else want to make any comments?

STELLA OLSON: So how do we get M-OSHA underneath I-OSHA? Never mind!

J. SCOTT GEORGE: Other comments from the Board and then finally the National Ombudsman. Gail, would you go first?

GAIL McDONALD: Certainly. I want to thank everyone for coming and all of you for staying. You're our tried and true learners here. These hearings are always a learning experience for us in the program and on the Board. We can't tell you how much you enrich our knowledge of government and of the business environment in which you all work. So thank you, there is no short-cut, we're a country with great variety and great vitality. So there's a lot to work with out there. Today has been a particularly excellent hearing and we learned in large measure many new things and we want to work with you and we want to be a program, as I say, we want you and all of your friends to know that the small business do have a right to regulatory fairness. My office is always available to you and you have your RegFair Board members.

J. SCOTT GEORGE: Also, add my thanks to everyone that came, the people from the agencies and the State agencies, the Federal agencies and small businesses and, particularly, the limestone quarries. You did an outstanding job in presenting your case and educating this Board on the issues. Understand that those who have made comments, you certainly have, as they say in Congress, the right to revise and extend your remarks, extend them anyway. I, frankly, was a little disturbed at the first two River Products and the other were in the middle of an audit today. That's a little disconcerting. While there may be no connection there, if there is any pattern of, you know, continued levels of inspections, we certainly want to hear about it. Senator Kit Bond, who is the author of SBREFA, and the Chair of the Senate Small Business

Committee in the U.S. Senate and Representative Jim Talent, also from Missouri, who chairs the House, has gone on record a number of times, they want comments to this group, you know, like you made today that you should not have any fear whatsoever for having made those comments. I appreciate your courage for coming and your articulation of the issues at hand and we appreciate it very much. With that, this hearing is concluded. Thank you.